Volume 3

STATUTES OF CALIFORNIA

AND DIGESTS OF MEASURES

1998

Constitution of 1879 as Amended

Measures Submitted to Vote of Electors,
Primary Election, June 2, 1998
and General Election, November 3, 1998

General Laws, Amendments to the Codes, Resolutions,
and Constitutional Amendments passed by the
California Legislature

1997–98 Regular Session
1997–98 First Extraordinary Session

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CHAPTER 452

An act to add Section 11105.7 to the Penal Code, relating to crime prevention, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 11105.7 is added to the Penal Code, to read:

11105.7. (a) Notwithstanding any other provision of law, when a person is required to submit fingerprints or a fingerprint card to the Department of Justice for a criminal background investigation for purposes of employment, certification, or licensing, and the department determines either that it is impossible for the person to submit fingerprints or that the submitted fingerprints are not legible for identification purposes, the department, in its discretion, shall do either of the following:

(1) Make a determination that the person presently is unable to provide legible fingerprints, and therefore shall be deemed to have complied with the statutory requirement to submit fingerprints. The department, using available personal identifying data that the department deems appropriate, shall then conduct a search to determine if the person has a criminal history.

(2) Request that the person submit a second set of fingerprints or obtain verification from another law enforcement agency that he or she is unable to provide legible fingerprint impressions either manually or electronically. If the department requests law enforcement verification of the quality of fingerprints that the person is able to provide, it may designate the law enforcement agency that is to provide the verification and provide a form for the verification. If the second set of fingerprints is illegible or if the designated law enforcement agency verifies that the person is unable to submit legible fingerprints, the person shall be deemed to have complied with the statutory requirement to submit fingerprints, and the department, using available personal identifying data it deems appropriate, shall conduct a search to determine if the person has a criminal history.

(b) After a search of its data bases pursuant to subdivision (a), the department shall issue a certificate regarding the criminal history of the applicant to the employing, licensing, or certifying agency. This certificate shall indicate whether or not the applicant has any reportable criminal history for purposes of the employment, license, or certificate the applicant is seeking. The agency shall be entitled to receive information regarding any reportable offenses and may use this information to make a determination of eligibility.

(c) Whenever the department determines pursuant to this section that a person has a criminal record, the person shall be provided an opportunity to question the accuracy or completeness of any material matter contained in the record, under the procedures provided in Section 11126.

(d) It is the intent of the Legislature that this section shall only apply to those persons who are unable to supply legible fingerprints due to disability, illness, accident, or other circumstances beyond their control and does not apply to persons who are unable to provide fingerprints because of actions they have taken to avoid submitting their fingerprints.

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 prevent qualified applicants, who may not have fingerprints as a result of a medical condition or disability, from becoming unemployed because of their inability to produce legible fingerprints, it is necessary that this measure take effect immediately.

CHAPTER 453

An act to amend Section 11515 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 11515 of the Vehicle Code is amended to read:

11515. (a) Whenever an insurance company makes a total loss settlement on a total loss salvage vehicle, the insurance company, an occupational licensee of the department authorized by the insurance company, or a salvage pool authorized by the insurance company, shall, within 10 days from the settlement of the loss, forward the properly endorsed certificate of ownership or other evidence of ownership acceptable to the department, the license plates, and a three dollar ($3) fee, to the department. An occupational licensee of the department may submit a certificate of license plate destruction in lieu of the actual license plate. The department, upon receipt of the certificate of ownership or other evidence of title, the license plates, and the three dollar ($3) fee, shall issue a salvage certificate for the vehicle.

(b) Whenever the owner of a total loss salvage vehicle retains possession of the vehicle, the insurance company shall notify the

department of the retention on a form prescribed by the department. The insurance company shall also notify the insured or owner of the insured's or owner's responsibility to comply with this subdivision. The owner shall, within 10 days from the settlement of the loss, forward the properly endorsed certificate of ownership or other evidence of ownership acceptable to the department, the license plates, and a three dollar ($3) fee to the department. The department, upon receipt of the certificate of ownership or other evidence of title, the license plates, and the three dollar ($3) fee, shall issue a salvage certificate for the vehicle.

(c) Whenever a total loss salvage vehicle is not the subject of an insurance settlement, the owner shall, within 10 days from the loss, forward the properly endorsed certificate of ownership or other evidence of ownership acceptable to the department, the license plates, and a three dollar ($3) fee to the department.

(d) Whenever a total loss salvage vehicle is not the subject of an insurance settlement, a self-insurer, as defined in Section 16052, shall, within 10 days from the loss, forward the properly endorsed certificate of ownership or other evidence of ownership acceptable to the department, the license plates, and a three dollar ($3) fee to the department.

(e) Prior to sale or disposal of a total loss salvage vehicle, the owner, owner's agent, or salvage pool, shall obtain a properly endorsed salvage certificate and deliver it to the purchaser within 10 days after payment in full for the salvage vehicle and shall also comply with Section 5900. The department shall accept the endorsed salvage certificate in lieu of the certificate of ownership or other evidence of ownership when accompanied by an application and other documents and fees, including, but not limited to, the fees required by Section 9265, as may be required by the department.

(f) This section does not apply to a vehicle which has been driven or taken without the consent of the owner thereof, until the vehicle has been recovered by the owner and only if the vehicle is a total loss salvage vehicle.

(g) A violation of subdivision (a), (b), (d), or (e) is a misdemeanor, pursuant to Section 40000.11. Notwithstanding Section 40000.11, a violation of subdivision (c) is an infraction, except that, if committed with intent to defraud, a violation of subdivision (c) is a misdemeanor.

(h) (1) Effective on a date selected by the director, but not later than January 1, 2000, a salvage certificate issued under this section shall include a statement that the seller and any subsequent sellers that transfer ownership of a total loss vehicle pursuant to a properly endorsed salvage certificate are required to disclose to the purchaser at, or prior to, the time of sale that the vehicle has been declared a total loss salvage vehicle.

(2) The seller shall be deemed to have met the disclosure requirement described in paragraph (1) if the seller complies with

subdivision (e) or prominently posts a notice at his or her place of business that the seller sells total loss salvage vehicles.

(3) Effective on and after the department includes in the salvage certificate form the statement described in paragraph (1), a seller who fails to make the disclosure described in paragraph (1) or (2) shall be subject to a civil penalty of not more than five hundred dollars ($500).

(4) Nothing in this subdivision affects any other civil remedy provided by law, including, but not limited to, punitive damages.

(5) This subdivision does not apply to a financial institution, leasing company, an occupational licensee of the department, a self-insurer, an insurance company, or their agents.

(6) Nothing in this subdivision exempts those persons or entities identified in paragraph (5) from any other provision of law in effect prior to January 1, 1999, that requires those persons or entities to disclose to the purchaser that a vehicle has been declared a total loss salvage vehicle.

CHAPTER 454

An act to amend Sections 350 and 12022.6 of the Penal Code, relating to crimes.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 350 of the Penal Code is amended to read:

350. (a) Any person who, willfully manufactures, intentionally sells, or knowingly possesses for sale any counterfeit of a mark registered with the Secretary of State or registered on the Principal Register of the United States Patent and Trademark Office, shall upon conviction, be punishable as follows:

(1) Where the offense involves less than 1,000 of the articles described in this subdivision, with a total retail or fair market value less than that required for grand theft as defined in Section 487, and if the person is an individual, he or she shall be punished by a fine of not more than five thousand dollars ($5,000), by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment; or, if the person is a corporation, by a fine of not more than one hundred thousand dollars ($100,000).

(2) Where the offense involves 1,000 or more of the articles described in this subdivision, or has a total retail or fair market value equal to or greater than that required for grand theft as defined in Section 487, and if the person is an individual, he or she shall be punished by imprisonment in a county jail not to exceed one year, or

in the state prison for 16 months, or two or three years, by a fine not to exceed two hundred fifty thousand dollars ($250,000), or by both that imprisonment and fine; or, if the person is a corporation, by a fine not to exceed five hundred thousand dollars ($500,000).

(b) Any person who has been convicted of a violation of either paragraph (1) or (2) of subdivision (a) shall, upon a subsequent conviction of paragraph (1) of subdivision (a), if the person is an individual, be punished by a fine of not more than fifty thousand dollars ($50,000), by imprisonment in a county jail for not more than one year, or in the state prison for 16 months, or two or three years, or by both that fine and imprisonment; or, if the person is a corporation, by a fine of not more than two hundred thousand dollars ($200,000).

(c) Any person who has been convicted of a violation of subdivision (a) and who, by virtue of the conduct that was the basis of the conviction, has directly and foreseeably caused death or great bodily injury to another through reliance on the counterfeited item for its intended purpose shall, if the person is an individual, be punished by a fine of not more than fifty thousand dollars ($50,000), by imprisonment in the state prison for two, three, or four years, or by both that fine and imprisonment; or, if that person is a corporation, by a fine of not more than two hundred thousand dollars ($200,000).

(d) In any action brought under this section resulting in a conviction or a plea of nolo contendere, the court shall order the forfeiture and destruction of all of those marks and of all goods, articles, or other matter bearing the marks, and the forfeiture and destruction or other disposition of all means of making the marks, and any and all electrical, mechanical, or other devices for manufacturing, reproducing, transporting, or assembling these marks, that were used in connection with, or were part of, any violation of this section. However, no vehicle shall be forfeited under this section that may be lawfully driven on the highway with a class 3 or 4 license, as prescribed in Section 12804 of the Vehicle Code, and that is any of the following:

(1) A community property asset of a person other than the defendant.

(2) The sole class 3 or 4 vehicle available to the immediate family of that person or of the defendant.

(3) Reasonably necessary to be retained by the defendant for the purpose of lawfully earning a living, or for any other reasonable and lawful purpose.

(e) As used in this section, the following definitions shall apply:

(1) When counterfeited but unassembled components of computer software packages are recovered, including, but not limited to, counterfeited computer diskettes, instruction manuals, or licensing envelopes, the number of "articles" shall be equivalent to the number of completed computer software packages that could have been made from those components.

(2) "Counterfeit mark" means a spurious mark that is identical with, or confusingly similar to, a registered mark and is used on or in connection with the same type of goods or services for which the genuine mark is registered. It is not necessary for the mark to be displayed on the outside of an article for there to be a violation. For articles containing digitally stored information, it shall be sufficient to constitute a violation if the counterfeit mark appears on a video display when the information is retrieved from the article. The term "spurious mark" includes genuine marks used on or in connection with spurious articles and includes identical articles containing identical marks, where the goods or marks were reproduced without authorization of, or in excess of any authorization granted by, the registrant.

(3) "Knowingly possess" means that the person possessing an article knew or had reason to believe that it was spurious, or that it was used on or in connection with spurious articles, or that it was reproduced without authorization of, or in excess of any authorization granted by, the registrant.

(4) "Registrant" means any person to whom the registration of a mark is issued and that person's legal representatives, successors, or assigns.

(5) "Sale" includes resale.

(6) "Value" has the following meanings:

(A) When counterfeit items of computer software are manufactured or possessed for sale, the "value" of those items shall be equivalent to the retail price or fair market price of the true items that are counterfeited.

(B) When counterfeited but unassembled components of computer software packages are recovered, including, but not limited to, counterfeited digital disks, instruction manuals, or licensing envelopes, the "value" of those components of computer software packages shall be equivalent to the retail price or fair market value of the number of completed computer software packages that could have been made from those components.

(C) "Retail or fair market value" of a counterfeit article means a value equivalent to the retail price or fair market value, as of the last day of the charged crime, of a completed similar genuine article containing a genuine mark.

(f) This section shall not be enforced against any party who has adopted and lawfully used the same or confusingly similar mark in the rendition of like services or the manufacture or sale of like goods in this state from a date prior to the earliest effective date of registration of the service mark or trademark either with the Secretary of State or on the Principle Register of the United States Patent and Trademark Office.

(g) An owner, officer, employee, or agent who provides, rents, leases, licenses, or sells real property upon which a violation of subdivision (a) occurs shall not be subject to a criminal penalty

pursuant to this section, unless he or she sells, or possesses for sale, articles bearing a counterfeit mark in violation of this section. This subdivision shall not be construed to abrogate or limit any civil rights or remedies for a trademark violation.

SEC. 2. Section 12022.6 of the Penal Code is amended to read:

12022.6. (a) When any person takes, damages, or destroys any property in the commission or attempted commission of a felony, with the intent to cause that taking, damage, or destruction, the court shall impose an additional term as follows:

(1) If the loss exceeds fifty thousand dollars ($50,000), the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of one year.

(2) If the loss exceeds one hundred fifty thousand dollars ($150,000), the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of two years.

(3) If the loss exceeds one million dollars ($1,000,000), the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of three years.

(4) If the loss exceeds two million five hundred thousand dollars ($2,500,000), the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of four years.

(b) In any accusatory pleading involving multiple charges of taking, damage, or destruction, the additional terms provided in this section may be imposed if the aggregate losses to the victims from all felonies exceed the amounts specified in this section and arise from a common scheme or plan. All pleadings under this section shall remain subject to the rules of joinder and severance stated in Section 954.

(c) The additional terms provided in this section shall not be imposed unless the facts of the taking, damage, or destruction in excess of the amounts provided in this section are charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(d) This section applies to, but is not limited to, property taken, damaged, or destroyed in violation of Section 502 or subdivision (b) of Section 502.7. This section shall also apply to applicable prosecutions for a violation of Section 350, 653h, 653s, or 653w.

(e) For the purposes of this section, the term "loss" has the following meanings:

(1) When counterfeit items of computer software are manufactured or possessed for sale, the "loss" from the counterfeiting of those items shall be equivalent to the retail price or fair market value of the true items that are counterfeited.

(2) When counterfeited but unassembled components of computer software packages are recovered, including, but not limited to, counterfeited computer diskettes, instruction manuals, or licensing envelopes, the "loss" from the counterfeiting of those components of computer software packages shall be equivalent to the retail price or fair market value of the number of completed computer software packages that could have been made from those components.

(f) It is the intent of the Legislature that the provisions of this section be reviewed within 10 years to consider the effects of inflation on the additional terms imposed. For that reason, this section shall remain in effect only until January 1, 2008, and as of that date is repealed unless a later enacted statute, which is enacted before January 1, 2008, deletes or extends that date.

SEC. 3. 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 455

An act to amend Section 28748.8 of the Public Utilities Code, relating to transportation.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 28748.8 of the Public Utilities Code is amended to read:

28748.8. (a) The board may by ordinance or resolution provide that each director shall be paid a sum that shall not exceed one thousand dollars ($1,000) for each calendar month that he or she serves as a director.

(b) The ordinance or resolution to authorize a monthly stipend pursuant to subdivision (a), in lieu of per-meeting compensation, shall include a requirement that a member can receive a monthly stipend for a given month only if he or she attends all scheduled and

noticed board meetings and all meetings of committees on which he or she serves for that month. In any month that a member fails to meet these attendance requirements, that member may be compensated at the rate of one hundred dollars ($100) per meeting attended, not to exceed five hundred dollars ($500) for that month.

(c) For the purpose of this section, a member who misses a meeting of the board or a committee while attending to official district business pursuant to authorization shall be construed as having attended the meeting.

(d) The ordinance or resolution may provide for not more than two excused absences during a calendar year without disqualifying the member for a monthly stipend.

(e) In addition to the compensation otherwise provided for in this section, each director may be allowed necessary traveling and personal expenses incurred solely as a result of the performance of his or her duties, in amounts as may be authorized by the board.

CHAPTER 456

An act to amend Sections 264.2 and 679.04 of the Penal Code, relating to sexual assault.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 264.2 of the Penal Code is amended to read:

264.2. (a) Whenever there is an alleged violation or violations of Section 261, 261.5, 262, 286, 288a, or 289, the law enforcement officer assigned to the case shall immediately provide the victim of the crime with the "Victims of Domestic Violence" card, as specified in paragraph (5) of subdivision (i) of Section 13701 of the Penal Code.

(b) (1) The law enforcement officer, or his or her agency, shall immediately notify the local rape victim counseling center whenever a victim of an alleged violation of Section 261, 261.5, 262, 286, 288a, or 289 is transported to a hospital for any medical evidentiary or physical examination. The victim shall have the right to have a sexual assault victim counselor, as defined in Section 1035.2 of the Evidence Code, and a support person of the victim's choosing present at any medical evidentiary or physical examination.

(2) Prior to the commencement of any initial medical evidentiary or physical examination arising out of a sexual assault, a victim shall be notified orally or in writing by the medical provider that the victim has the right to have present a sexual assault victim counselor and at least one other support person of the victim's choosing.

(3) The hospital may verify with the law enforcement officer, or his or her agency, whether the local rape victim counseling center has been notified, upon the approval of the victim.

(4) A support person may be excluded from a medical evidentiary or physical examination if the law enforcement officer or medical provider determines that the presence of that individual would be detrimental to the purpose of the examination.

SEC. 1.5. Section 264.2 of the Penal Code is amended to read:

264.2. (a) Whenever there is an alleged violation or violations of subdivision (e) of Section 243, or Section 261, 261.5, 262, 273.5, 286, 288a, or 289, the law enforcement officer assigned to the case shall immediately provide the victim of the crime with the "Victims of Domestic Violence" card, as specified in subparagraph (G) of paragraph (9) of subdivision (c) of Section 13701 of the Penal Code.

(b) (1) The law enforcement officer, or his or her agency, shall immediately notify the local rape victim counseling center, whenever a victim of an alleged violation of Section 261, 261.5, 262, 286, 288a, or 289 is transported to a hospital for any medical evidentiary or physical examination. The victim shall have the right to have a sexual assault victim counselor, as defined in Section 1035.2 of the Evidence Code, and a support person of the victim's choosing present at any medical evidentiary or physical examination.

(2) Prior to the commencement of any initial medical evidentiary or physical examination arising out of a sexual assault, a victim shall be notified orally or in writing by the medical provider that the victim has the right to have present a sexual assault victim counselor and at least one other support person of the victim's choosing.

(3) The hospital may verify with the law enforcement officer, or his or her agency, whether the local rape victim counseling center has been notified, upon the approval of the victim.

(4) A support person may be excluded from a medical evidentiary or physical examination if the law enforcement officer or medical provider determines that the presence of that individual would be detrimental to the purpose of the examination.

SEC. 2. Section 679.04 of the Penal Code is amended to read:

679.04. (a) A victim of sexual assault as the result of any offense specified in paragraph (1) of subdivision (b) of Section 264.2 has the right to have victim advocates and a support person of the victim's choosing present at any interview by law enforcement authorities, district attorneys, or defense attorneys. However, the support person may be excluded from an interview by law enforcement or the district attorney if the law enforcement authority or the district attorney determines that the presence of that individual would be detrimental to the purpose of the interview. As used in this section, "victim advocate" means a sexual assault victim counselor, as defined in Section 1035.2 of the Evidence Code, or a victim advocate working in a center established under Article 2 (commencing with Section 13835) of Chapter 4 of Title 6 of Part 4.

(b) (1) Prior to the commencement of the initial interview by law enforcement authorities or the district attorney pertaining to any criminal action arising out of a sexual assault, a victim of sexual assault as the result of any offense specified in Section 264.2 shall be notified orally or in writing by the attending law enforcement authority or district attorney that the victim has the right to have victim advocates and a support person of the victim's choosing present at the interview or contact. This subdivision applies to investigators and agents employed or retained by law enforcement or the district attorney.

(2) At the time the victim is advised of his or her rights pursuant to paragraph (1), the attending law enforcement authority or district attorney shall also advise the victim of the right to have victim advocates and a support person present at any interview by the defense attorney or investigators or agents employed by the defense attorney.

(c) An initial investigation by law enforcement to determine whether a crime has been committed and the identity of the suspects shall not constitute a law enforcement interview for purposes of this section.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 264.2 of the Penal Code proposed by both this bill and AB 1201. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 264.2 of the Penal Code, and (3) this bill is enacted after AB 1201, in which case Section 1 of this bill shall not become operative.

CHAPTER 457

An act to amend Sections 27491.4, 27491.41, and 27491.47 of the Government Code, to amend Section 7150.5 of, and to add Chapter 3.55 (commencing with Section 7158) to Part 1 of Division 7 of, the Health and Safety Code, relating to health.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 27491.4 of the Government Code is amended to read:

27491.4. (a) For purposes of inquiry the coroner shall, within 24 hours or as soon as feasible thereafter, where the suspected cause of death is sudden infant death syndrome and, in all other cases, the coroner may, in his or her discretion, take possession of the body, which shall include the authority to exhume the body, order it removed to a convenient place, and make or cause to be made a postmortem examination or autopsy thereon, and make or cause to be made an analysis of the stomach, stomach contents, blood, organs, fluids, or tissues of the body. The detailed medical findings resulting from an inspection of the body or autopsy by an examining physician shall be either reduced to writing or permanently preserved on recording discs or other similar recording media, shall include all positive and negative findings pertinent to establishing the cause of death in accordance with medicolegal practice and this, along with the written opinions and conclusions of the examining physician, shall be included in the coroner's record of the death. The coroner shall have the right to retain only those tissues of the body removed at the time of the autopsy as may, in his or her opinion, be necessary or advisable to the inquiry into the case, or for the verification of his or her findings. No person may be present during the performance of a coroner's autopsy without the express consent of the coroner.

(b) In any case in which the coroner knows, or has reason to believe, that the deceased has made valid provision for the disposition of his or her body or a part or parts thereof for medical or scientific purposes in accordance with Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code, the coroner shall neither perform nor authorize any other person to perform an autopsy on the body unless the coroner has contacted or attempted to contact the physician last in attendance to the deceased. If the physician cannot be contacted, the coroner shall then notify or attempt to notify one of the following of the need for an autopsy to determine the cause of death: (1) the surviving spouse; (2) a surviving child or parent; (3) a surviving brother or sister; (4) any other kin or person who has acquired the right to control the disposition of the remains. Following a period of 24 hours after attempting to contact the physician last in attendance and notifying or attempting to notify one of the responsible parties listed above, the coroner may perform or authorize the performance of an autopsy, as otherwise authorized or required by law.

(c) Nothing in this section shall be deemed to prohibit the discretion of the coroner to conduct autopsies upon any victim of sudden, unexpected, or unexplained death or any death known or suspected of resulting from an accident, suicide, or apparent criminal means, or other death, as described in Section 27491.

SEC. 2. Section 27491.41 of the Government Code is amended to read:

27491.41. (a) For purposes of this section, "sudden infant death syndrome" means the sudden death of any infant that is unexpected by the history of the infant and where a thorough postmortem examination fails to demonstrate an adequate cause of death.

(b) The Legislature finds and declares that sudden infant death syndrome (SIDS) is the leading cause of death for children under age one, striking one out of every 500 children. The Legislature finds and declares that sudden infant death syndrome is a serious problem within the State of California, and that public interest is served by research and study of sudden infant death syndrome, and its potential causes and indications.

(c) (1) To facilitate these purposes, the coroner shall, within 24 hours, or as soon thereafter as feasible, perform an autopsy in any case where an infant has died suddenly and unexpectedly.

(2) However, if the attending physician desires to certify that the cause of death is sudden infant death syndrome, an autopsy may be performed at the discretion of the coroner. If the coroner performs an autopsy pursuant to this section, he or she shall also certify the cause of death.

(d) The autopsy shall be conducted pursuant to a standardized protocol developed by the State Department of Health Services. The protocol is exempt from the procedural requirements pertaining to the adoption of administrative rules and regulations pursuant to Article 2 (commencing with Section 11342) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code. The protocol shall be developed and approved by July 1, 1990.

(e) The protocol shall be followed by all coroners throughout the state when conducting the autopsies required by this section. The coroner shall state on the certificate of death that sudden infant death syndrome was the cause of death when the coroner's findings are consistent with the definition of sudden infant death syndrome specified in the standardized autopsy protocol. The protocol may include requirements and standards for scene investigations, requirements for specific data, criteria for ascertaining cause of death based on the autopsy, and criteria for any specific tissue sampling, and any other requirements. The protocol may also require that specific tissue samples must be provided to a central tissue repository designated by the State Department of Health Services.

(f) The State Department of Health Services shall establish procedures and protocols for access by researchers to any tissues, or other materials or data authorized by this section. Research may be conducted by any individual with a valid scientific interest and prior approval from the State Committee for the Protection of Human Subjects. The tissue samples, the materials, and all data shall be subject to the confidentiality requirements of Section 103850 of the Health and Safety Code.

(g) The coroner may take tissue samples for research purposes from infants who have died suddenly and unexpectedly without consent of the responsible adult if the tissue removal is not likely to result in any visible disfigurement.

(h) A coroner shall not be liable for damages in a civil action for any act or omission done in compliance with this section.

(i) No consent of any person is required prior to undertaking the autopsy required by this section.

SEC. 3. Section 27491.47 of the Government Code is amended to read:

27491.47. (a) Notwithstanding any other provision of law, the coroner may, in the course of an autopsy, remove and release or authorize the removal and release of corneal eye tissue from a body within the coroner's custody, if all of the following conditions are met:

(1) The autopsy has otherwise been authorized.

(2) The coroner has no knowledge of objection to the removal and release of corneal tissue having been made by the decedent or any other person specified in Section 7151 of the Health and Safety Code and has obtained any one of the following:

(A) A dated and signed written consent by the donor, next of kin, or any other person specified in Section 7151 of the Health and Safety Code on a form that clearly indicates the general intended use of the tissue and contains the signature of at least one witness.

(B) Proof of the existence of a recorded telephonic consent by the donor, next of kin, or any other person specified in Section 7151 of the Health and Safety Code in the form of an audio tape recording of the conversation or a transcript of the recorded conversation, which indicates the general intended use of the tissue.

(C) A document recording a verbal telephonic consent by the donor, next of kin, or any other person specified in Section 7151 of the Health and Safety Code, witnessed and signed by no less than two members of the requesting entity, hospital, eye bank, or procurement organization, memorializing the consenting person's knowledge of and consent to the general intended use of the gift.

The form of consent obtained under subparagraph (A), (B), or (C) shall be kept on file by the requesting entity and the official agency for a minimum of three years.

(3) The removal of such tissue will not unnecessarily mutilate the body, be accomplished by enucleation, nor interfere with the autopsy.

(4) The tissue will be removed by a coroner, licensed physician and surgeon, or a trained transplant technician.

(5) The tissue will be released to a public or nonprofit facility for transplant, therapeutic, or scientific purposes.

(b) Neither the coroner nor medical examiner authorizing the removal of the corneal tissue, nor any hospital, medical center, tissue bank, storage facility, or person acting upon the request, order, or direction of the coroner or medical examiner in the removal of

corneal tissue pursuant to this section, shall incur civil liability for the removal in an action brought by any person who did not object prior to the removal of the corneal tissue, nor be subject to criminal prosecution for the removal of the corneal tissue pursuant to the provisions of this section.

(c) This section may not be construed to interfere with the ability of a person to make an anatomical gift pursuant to the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code).

SEC. 4. Section 7150.5 of the Health and Safety Code is amended to read:

7150.5. (a) Except as provided in subdivision (b) of Section 12811 of, and subdivision (b) of Section 13005 of, the Vehicle Code, an individual who is at least 18 years of age, or an individual who is between 15 and 18 years of age as specified in subdivision (m), may make an anatomical gift for any of the purposes stated in subdivision (a) of Section 7153, limit an anatomical gift to one or more of those purposes, or refuse to make an anatomical gift.

(b) An anatomical gift may be made only by one of the following:

(1) A document of gift signed by the donor.

(2) A document of gift signed by another individual and by two witnesses, all of whom have signed at the direction and in the presence of the donor and of each other, and state that it has been so signed.

(3) A document of gift orally made by a donor by means of a tape recording in his or her own voice.

(c) If a document of gift is attached to or imprinted on a donor's motor vehicle operator's or chauffeur's license, the document of gift shall comply with subdivision (b). Revocation, suspension, expiration, or cancellation of the license does not invalidate the anatomical gift.

(d) A document of gift may designate a particular physician or surgeon to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the anatomical gift may employ or authorize any physician, surgeon, technician, or enucleator to carry out the appropriate procedures.

(e) An anatomical gift by will takes effect upon death of the testator, whether or not the will is probated. If, after death, the will is declared invalid for testamentary purposes, the validity of the anatomical gift is unaffected.

(f) A donor may amend or revoke an anatomical gift, not made by will, only by one or more of the following:

(1) A signed statement.

(2) An oral statement made in the presence of two individuals or by means of a tape recording in the donor's own voice.

(3) Any form of communication during a terminal illness or injury addressed to a physician or surgeon.

(4) The delivery of a signed statement to a specified donee to whom a document of gift had been delivered.

(g) The donor of an anatomical gift made by will may amend or revoke the gift in the manner provided for amendment or revocation of wills, or as provided in subdivision (f).

(h) An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of any person after the donor's death.

(i) An individual may refuse to make an anatomical gift of the individual's body or part by a writing signed in the same manner as a document of gift, a statement attached to or imprinted on a donor's motor vehicle operator's or chauffeur's license, or any other writing used to identify the individual as refusing to make an anatomical gift. During a terminal illness or injury, the refusal may be an oral statement or other form of communication.

(j) In the absence of contrary indications by the donor, an anatomical gift of a part is neither a refusal to give other parts nor a limitation on an anatomical gift under Section 7151 or on a removal or release of other parts under Section 7151.5.

(k) In the absence of contrary indications by the donor, a revocation or amendment of an anatomical gift is not a refusal to make another anatomical gift. If the donor intends a revocation to be a refusal to make an anatomical gift, the donor shall make the refusal pursuant to subdivision (i).

(*l*) Any signed statement that is in compliance with this chapter, or a driver's license or identification card that meets the requirements for validity set forth in subdivision (b) of Section 12811 of the Vehicle Code or subdivision (b) of Section 13005 of the Vehicle Code, shall be honored and no further consent or approval from the next of kin or other person listed in subdivision (a) of Section 7151 shall be required.

(m) Notwithstanding subdivision (a), an individual who is between 15 and 18 years of age may make an anatomical gift for any purpose stated in subdivision (a) of Section 7153, limit an anatomical gift to one or more of those purposes, refuse to make an anatomical gift, or amend or revoke an anatomical gift, only upon the written consent of a parent or guardian.

SEC. 5. Chapter 3.55 (commencing with Section 7158) is added to Part 1 of Division 7 of the Health and Safety Code, to read:

CHAPTER 3.55. ORGAN AND TISSUE DONATION INFORMATION AND PROCEDURES

7158. (a) The Controller shall prepare, or cause to be prepared, an organ donor information brochure for insertion in all payroll warrants issued by the Controller for the March 1999 pay period, and for every March pay period thereafter, in recognition of National

Organ and Tissue Awareness Week, which occurs in April of each year.

(b) In lieu of developing an organ donor brochure pursuant to subdivision (a), the Controller may use a brochure developed by a regional organ donor organization. The Controller shall screen for appropriateness for wide distribution.

7158.1. (a) As a part of its ongoing audit and review process, the Licensing and Certification Division of the State Department of Health Services shall audit for the existence of organ and tissue procurement procedures for all inpatient hospital facilities. The audit shall include a determination of whether these procedures are in place in the facility, whether the procedures are operational and functioning, and whether the procedures are being used. The department shall not be required to audit for the effectiveness of the procedures. No additional audits shall be required for purposes of this section. Instead, the department shall add an organ and tissue audit element to its regular ongoing audits of inpatient facilities.

(b) For purposes of this chapter, "organ and tissue procurement procedures" shall include protocols required to be developed pursuant to Section 7184. The audit criteria shall, at a minimum, include all of the following:

(1) That the protocols have been developed.

(2) That the protocols are operational.

(3) That notification requirements to next of kin or other individuals as set forth in Section 7151 and to organ procurement organizations are within a timeframe that is consistent with the maintenance of the organs for the purpose of transplantation.

(c) The absence of any of the required organ and tissue procurement procedures at any facility shall be noted by the division, and included in a written audit report or site review summary. In the event that an audit or facility review is conducted in conjunction with review by a national accreditation agency, and that agency prepares a report, the department shall request that the information required by this section with respect to organ and tissue procurement procedures be included in the report prepared by the national accreditation agency. In this event, the department shall not be required to prepare a separate report.

7158.2. Every health care service plan contract that is issued, amended, delivered, or renewed on or after July 1, 1999, shall provide, upon enrollment and annually thereafter, a notice to subscribers in the evidence of coverage, health plan newsletter, or any direct plan communication to subscribers, information regarding organ donation options. This notice shall inform subscribers of the societal benefits of organ donations and the method whereby they may elect to be an organ or tissue donor.

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CHAPTER 458

An act to amend Section 1808.4 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 1808.4 of the Vehicle Code is amended to read:

1808.4. (a) The home address of any of the following persons, that appears in any record of the department, is confidential, if the person requests the confidentiality of that information:

(1) Attorney General.

(2) State public defender.

(3) Members of the Legislature.

(4) Judges or court commissioners.

(5) District attorneys.

(6) Public defenders.

(7) Attorneys employed by the Department of Justice, the office of the State Public Defender, or a county office of the district attorney or public defender.

(8) City attorneys and attorneys who submit verification from their public employer that they represent the city in matters that routinely place them in personal contact with persons under investigation for, charged with, or convicted of, committing criminal acts, if those attorneys are employed by city attorneys.

(9) Nonsworn police dispatchers.

(10) Child abuse investigators or social workers, working in child protective services within a social services department.

(11) Active or retired peace officers, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code.

(12) Employees of the Department of Corrections, the Department of the Youth Authority, or the Prison Industry Authority specified in Sections 20017.77 and 20017.79 of the Government Code.

(13) Nonsworn employees of a city police department, a county sheriff's office, the Department of the California Highway Patrol, federal, state, and local detention facilities, and local juvenile halls, camps, ranches, and homes, who submit agency verification that, in the normal course of their employment, they control or supervise inmates or are required to have a prisoner in their care or custody.

(14) County counsels assigned to child abuse cases.

(15) Investigators employed by the Department of Justice, a county district attorney, or a county public defender.

(16) Members of a city council.

(17) Members of a board of supervisors.

(18) Federal prosecutors and criminal investigators and National Park Service Rangers working in this state.

(19) Any active or retired city enforcement officer engaged in the enforcement of the Vehicle Code or municipal parking ordinances.

(20) (A) The spouse or child of any person listed in paragraphs (1) to (19), inclusive, regardless of the spouse's or child's place of residence.

(B) The surviving spouse or child of a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, if the peace officer died in the line of duty.

(b) The confidential home address of any of the persons listed in subdivision (a) shall not be disclosed to any person, except a court, a law enforcement agency, the State Board of Equalization, or any governmental agency to which, under any provision of law, information is required to be furnished from records maintained by the department.

(c) Any record of the department containing a confidential home address shall be open to public inspection, as provided in Section 1808, if the address is completely obliterated or otherwise removed from the record. The home address shall be withheld from public inspection for three years following termination of office or employment except with respect to retired peace officers, whose home addresses shall be withheld from public inspection permanently upon request of confidentiality at the time the information would otherwise be opened. The home address of the surviving spouse or child listed in subparagraph (B) of paragraph (20) of subdivision (a) shall be withheld from public inspection for three years following the death of the peace officer. The department shall inform any person who requests a confidential home address what agency the individual whose address was requested is employed by or the court at which the judge or court commissioner presides.

(d) A violation of subdivision (a) by the disclosure of the confidential home address of a peace officer, as specified in paragraph (11) of subdivision (a), a nonsworn employee of the city police department or county sheriff's office, or the spouses or children of these persons, including, but not limited to, the surviving spouse or child listed in subparagraph (B) of paragraph (20) of subdivision (a), that results in bodily injury to the peace officer, employee of the city police department or county sheriff's office, or the spouses or children of these persons is a felony.

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 459

An act to amend Section 13480 of the Business and Professions Code, relating to gasoline.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 13480 of the Business and Professions Code is amended to read:

13480. (a) It is unlawful for any person to sell any petroleum product referred to in this chapter at any place where petroleum products are kept or stored for sale, unless there is affixed to each container, receptacle, pump, dispenser, and inlet end of the fill pipe of each underground storage tank, from which or into which that product is drawn or poured out for sale or delivery, a sign or label plainly visible consisting of the name of the product, the brand, trademark, or trade name of the product, and, in the case of engine fuel and kerosene, the grade or brand name designation.

(b) When the product is oil, as defined by Section 13401, each sign or label shall also have in letters or numerals, plainly visible, the viscosity grade classification as determined in accordance with the Society of Automotive Engineers (SAE) latest standard for engine oil viscosity classification SAE J300 or manual transmission and axle lubricants viscosity classification SAE J306, as applicable, and shall be preceded by the letters "SAE."

(c) When the product is automotive spark-ignition engine fuel, except M-85 and M-100 methanol fuel, there shall be conspicuously displayed on the dispensing device at least one sign or label showing the minimum octane number or antiknock index, as defined in Section 13403, of the product sold therefrom.

(d) When the product is a motor fuel consisting of a mixture or premixture of gasoline and oil or gasoline-oxygenate blend and motor oil, there shall be conspicuously displayed on the dispensing device at least one sign or label stating the ratio of gasoline to motor oil or gasoline-oxygenate blend to motor oil.

(e) All signs or labels required by this section for retail motor fuel dispensers and containers of more than one gallon capacity shall be in letters and numerals not less than one-half inch (12.70 mm) in height. On containers of one gallon or less, the signs or labels shall be

in letters and numerals not less than one-fourth inch (6.35 mm) in height and one-sixteenth inch (1.59 mm) in width.

(f) The provisions of this section pertaining to octane numbers or antiknock index and motor oil SAE viscosity number grade shall not apply to products sold for aviation purposes.

(g) This section shall apply, with respect to thinners or solvents, only to the sale, delivery, or offer for sale of the products through service stations, garages, and other retail outlets.

CHAPTER 460

An act to add Section 653.23 to the Penal Code, relating to crimes.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 653.23 is added to the Penal Code, to read:

653.23. (a) It is unlawful for any person to do either of the following:

(1) Direct, supervise, recruit, or otherwise aid another person in the commission of a violation of subdivision (b) of Section 647 or subdivision (a) of Section 653.22.

(2) Collect or receive all or part of the proceeds earned from an act or acts of prostitution committed by another person in violation of subdivision (b) of Section 647.

(b) Among the circumstances that may be considered in determining whether a person is in violation of subdivision (a) are that the person does the following:

(1) Repeatedly speaks or communicates with another person who is acting in violation of subdivision (a) of Section 653.22.

(2) Repeatedly or continuously monitors or watches another person who is acting in violation of subdivision (a) of Section 653.22.

(3) Repeatedly engages or attempts to engage in conversation with pedestrians or motorists to solicit, arrange, or facilitate an act of prostitution between the pedestrians or motorists and another person who is acting in violation of subdivision (a) of Section 653.22.

(4) Repeatedly stops or attempts to stop pedestrians or motorists to solicit, arrange, or facilitate an act of prostitution between pedestrians or motorists and another person who is acting in violation of subdivision (a) of Section 653.22.

(5) Circles an area in a motor vehicle and repeatedly beckons to, contacts, or attempts to contact or stop pedestrians or other motorists to solicit, arrange, or facilitate an act of prostitution between the pedestrians or motorists and another person who is acting in violation of subdivision (a) of Section 653.22.

(6) Receives or appears to receive money from another person who is acting in violation of subdivision (a) of Section 653.22.

(7) Engages in any of the behavior described in paragraphs (1) to (6), inclusive, in regard to or on behalf of two or more persons who are in violation of subdivision (a) of Section 653.22.

(8) Has been convicted of violating this section, subdivision (a) or (b) of Section 647, subdivision (a) of Section 653.22, Section 266h, or 266i, or any other offense relating to or involving prostitution within five years of the arrest under this section.

(9) Has engaged, within six months prior to the arrest under subdivision (a), in any behavior described in this subdivision, with the exception of paragraph (8), or in any other behavior indicative of prostitution activity.

(c) The list of circumstances set forth in subdivision (b) is not exclusive. The circumstances set forth in subdivision (b) should be considered particularly salient if they occur in an area that is known for prostitution activity. Any other relevant circumstances may be considered. Moreover, no one circumstance or combination of circumstances is in itself determinative. A violation of subdivision (a) shall be determined based on an evaluation of the particular circumstances of each case.

(d) Nothing in this section shall preclude the prosecution of a suspect for a violation of Section 266h or 266i or for any other offense, or for a violation of this section in conjunction with a violation of Section 266h or 266i or any other 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 461

An act to amend Section 51745 of, and to add and repeal Section 51745.1 to, the Education Code, relating to independent study.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 51745 of the Education Code is amended to read:

51745. (a) Commencing with the 1990–91 school year, the governing board of a school district or a county office of education may offer independent study to meet the educational needs of pupils in accordance with the requirements of this article. Educational opportunities offered through independent study may include, but shall not be limited to, the following:

(1) Special assignments extending the content of regular courses of instruction.

(2) Individualized study in a particular area of interest or in a subject not currently available in the regular school curriculum.

(3) Individualized alternative education designed to teach the knowledge and skills of the core curriculum. Independent study shall not be provided as an alternative curriculum.

(4) Continuing and special study during travel.

(5) Volunteer community service activities that support and strengthen pupil achievement.

(b) Not more than 10 percent of the pupils participating in an opportunity school or program, or a continuation high school, calculated as specified by the State Department of Education, shall be eligible for apportionment credit for independent study pursuant to this article. A pupil who is pregnant or is a parent who is the primary caregiver for one or more of his or her children shall not be counted within the 10 percent cap.

(c) No individual with exceptional needs, as defined in Section 56026, may participate in independent study, unless his or her individualized education program developed pursuant to Article 3 (commencing with Section 56340) of Chapter 4 of Part 30 specifically provides for that participation.

(d) No temporarily disabled pupil may receive individual instruction pursuant to Section 48206.3 through independent study.

(e) No course included among the courses required for high school graduation under Section 51225.3 shall be offered exclusively through independent study.

SEC. 1.5. Section 51745 of the Education Code is amended to read:

51745. (a) Commencing with the 1990–91 school year, the governing board of a school district or a county office of education may offer independent study to meet the educational needs of pupils in accordance with the requirements of this article. Educational opportunities offered through independent study may include, but shall not be limited to, the following:

(1) Special assignments extending the content of regular courses of instruction.

(2) Individualized study in a particular area of interest or in a subject not currently available in the regular school curriculum.

(3) Individualized alternative education designed to teach the knowledge and skills of the core curriculum. Independent study shall not be provided as an alternative curriculum.

(4) Continuing and special study during travel.

(5) Volunteer community service activities that support and strengthen pupil achievement.

(6) Cooperative vocational programs and community classrooms provided pursuant to Section 52372.1.

(b) All high school pupils participating in independent study programs pursuant to this article shall be advised of the opportunity to participate in cooperative vocational programs and community classrooms provided, pursuant to Section 52372.1, and delivered by the regional occupation program.

(c) Not more than 10 percent of the pupils participating in an opportunity school or program, or a continuation high school, calculated as specified by the State Department of Education, shall be eligible for apportionment credit for independent study pursuant to this article.

A pupil who is pregnant or is a parent who is the primary caregiver for one or more of his or her children shall not be counted within the 10 percent cap.

(d) No individual with exceptional needs, as defined in Section 56026, may participate in independent study, unless his or her individualized education program developed pursuant to Article 3 (commencing with Section 56340) of Chapter 4 of Part 30 specifically provides for that participation.

(e) No temporarily disabled pupil may receive individual instruction pursuant to Section 48206.3 through independent study.

(f) No course included among the courses required for high school graduation under Section 51225.3 shall be offered exclusively through independent study.

SEC. 2. Section 51745.1 is added to the Education Code, to read:

51745.1. (a) By January 1, 2004, the State Department of Education shall report to the Legislature on the impact of the exemption of pregnant and parenting teens from the independent study limitations set forth in subdivision (b) of Section 51745 and its effects on the number of pregnant and parenting teens enrolled in opportunity schools or programs or continuation schools if the necessary data is available.

(b) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 51745 of the Education Code proposed by both this bill and SB 1701. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill

amends Section 51745 of the Education Code, and (3) this bill is enacted after SB 1701, in which case Section 1 of this bill shall not become operative.

CHAPTER 462

An act to add Section 18032 to the Education Code, relating to public libraries.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 18032 is added to the Education Code, to read:

18032. (a) Every public library that receives state funds pursuant to this chapter and that provides public access to motion picture videotapes shall, by a majority vote of the governing board, adopt a policy regarding access by minors to motion picture videotapes by January 1, 2000.

(b) Every public library that is required to adopt a policy pursuant to subdivision (a) shall make that policy available to members of the public at every library branch.

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 463

An act to add Section 2106.5 to the Code of Civil Procedure, and to add Sections 27279.2 and 27279.4 to, to add and repeal Section 27279.3 of, and to repeal and add Section 27279.1 of, the Government Code, relating to local agency procedures.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 2106.5 is added to the Code of Civil Procedure, to read:

2106.5. This title shall be applied and construed to permit the transmission, filing, recording, and indexing of notices of federal tax liens and all certificates that relate to or affect those liens, including, but not limited to, certificates of release, discharge, subordination, and nonattachment, by electronic or magnetic means, using computerized data processing, telecommunications, and other similar information technologies available to the filing offices.

SEC. 2. Section 27279.1 of the Government Code is repealed.

SEC. 3. Section 27279.1 is added to the Government Code, to read:

27279.1. (a) The recorders of San Bernardino County and Orange County may accept, in lieu of a written paper document, a digitized image of a recordable instrument if both of the following conditions are met:

(1) The requester and addressee for delivery of the recorded image meets the criteria set forth in either Section 27279.2 or 27279.3.

(2) The county recorder determines that accepting electronically recorded documents from the requester is in the best interest of the county and the public. Factors the county recorder shall consider include, but are not limited to, both of the following:

(A) Whether or not the volume and quality of digitized instruments submitted by the requester will be sufficient to warrant electronic recordation.

(B) Whether, in order to protect the county and the public, the requester has effective security precautions addressing potential fraud and forging of documents in the electronic recordation process.

(b) The Legislature finds and declares that, because of the unique circumstances applicable to the counties referenced in subdivision (a), as regards the present ability of these counties to process digitized images for electronic recordation, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution.

SEC. 4. Section 27279.2 is added to the Government Code, to read:

27279.2. For purposes of Section 27279.1, the requester and addressee for delivery of a recorded image may record a digitized image of a recordable instrument if it is an entity, agency, branch, or instrumentality of the state or federal government qualifying under either Section 27279 of this code or Section 2106.5 of the Code of Civil Procedure.

SEC. 5. Section 27279.3 is added to the Government Code, to read:

27279.3. (a) For purposes of Section 27279.1, a requester and addressee for delivery of a recorded image may record a digitized image of a recordable instrument if it is a licensed title insurer, as defined in Section 12340.4 of the Insurance Code, or a licensed underwritten title company, as defined in Section 12340.5 of the Insurance Code.

(b) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, enacted before January 1, 2000, deletes or extends that date.

SEC. 6. Section 27279.3 is added to the Government Code, to read:

27279.3. (a) A requester and addressee for delivery of a recorded image may record a digitized image of a recordable instrument if the requester meets the conditions set forth in paragraph (2) of subdivision (a) of Section 27279.1.

(b) This section shall become operative on January 1, 2000.

SEC. 7. Section 27279.4 is added to the Government Code, to read:

27279.4. (a) The California Attorney General shall appoint an Electronic Recordation Task Force consisting of voluntary representatives from governmental agencies and industry groups specified in subdivision (b) who shall meet on a regular basis to address the technical, legal, security and economic issues associated with electronic recordation. The task force shall make recommendations regarding all of the following:

(1) In addition to requesters qualifying under Section 27279.2, which persons and entities should be authorized to digitize and record documents electronically after January 1, 2000, in order to limit real property fraud, forgery, and consumer risks associated with electronic recordation and provide a cost benefit to the county.

(2) Guidelines for the standardization of both software and hardware used by counties to ensure maximum efficiency, cost effectiveness, and maximum use of the electronic recordation process by requesters qualifying under Sections 27279.2 and 27279.3.

(3) Appropriate recording fees and other assessments to cover increased costs to both county recorders and requesters.

(b) The task force described in subdivision (a) shall consist of representatives from governmental and industry groups, including county recorders, county district attorneys, the Franchise Tax Board, Fannie Mae, the United States Internal Revenue Service, trustees, mortgage bankers, financial institutions, and the title insurance and real estate industries.

(c) Notwithstanding Section 7550.5, the task force shall prepare and submit its complete recommendations to the Governor and the Legislature no later than July 1, 1999.

CHAPTER 464

An act to amend Sections 8030, 8041, and 8780 of the Fish and Game Code, relating to fishing, and making an appropriation therefor.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 8030 of the Fish and Game Code is amended to read:

8030. Any person who engages in any business for profit involving fish shall be licensed pursuant to this article, except as follows:

(a) A commercial fisherman who sells fish only to persons licensed under this article to purchase or receive fish from commercial fishermen and who does not engage in any activity described in Section 8034, 8035, or 8036 unless licensed to engage in both activities.

(b) A person licensed pursuant to Section 8460 who only takes, transports, or sells live freshwater fish for bait.

(c) A person who sells fish or aquaculture products only at retail to the ultimate consumer if that person does not conduct any activities described in Section 8033, 8035, or 8036.

(d) Pursuant to Division 12 (commencing with Section 15000), a person who deals only in products of aquaculture.

(e) A person who deals only with nonnative live products that are not utilized for human consumption but that are utilized solely for pet industry or hobby purposes and who does not engage in the activities described in Section 8033.1.

(f) A person who is employed by the fish receiver to unload fish or fish products from a commercial fishing boat at a dock.

(g) A person who purchases, sells, takes, or receives live marine fish for use as live bait, which are not brought ashore, and who does not engage in any activity described in Section 8033, 8033.1, 8034, 8035, or 8036.

SEC. 2. Section 8041 of the Fish and Game Code is amended to read:

8041. (a) The following persons shall pay the landing tax determined pursuant to Section 8042:

(1) Any person who is required to be licensed as a fish receiver, and any person who is licensed before January 1, 1987, as a wholesaler or a processor pursuant to former Section 8040 and who receives fish from commercial fishermen.

(2) Any commercial fisherman who sells fish to any person who is not a licensed fish receiver.

(b) Notwithstanding subdivision (a), a person licensed pursuant to Section 8460 who only takes, transports, or sells live freshwater fish for bait or a commercial fisherman who sells live freshwater fish for bait to such a licensed person, and a person licensed pursuant to Section 8033.1 who takes, transports, or sells live aquaria fish as described in Section 8597 or a commercial fisherman who sells live aquaria fish, are exempt from the landing tax imposed under this article. It is the intent of the Legislature that the license fee for live aquaria fish described in Section 8033.1 shall be in lieu of a landing tax.

(c) Notwithstanding subdivision (a), a person who purchases, sells, takes, or receives live marine fish for use as live bait as described in subdivision (g) of Section 8030 is exempt from the landing tax imposed under this article.

SEC. 3. Section 8780 of the Fish and Game Code is amended to read:

8780. (a) As used in this chapter, the term "bait net" means a lampara or round haul type net, the mesh of which is constructed of twine not exceeding Standard No. 9 medium cotton seine twine or synthetic twine of equivalent size or strength. Notwithstanding Section 8757, except for drum seines and other round haul nets authorized under a permit issued by the department pursuant to this section, the nets may not have rings along the lead line or any method of pursing the bottom of the net.

(b) Bait nets may be used to take fish for bait in Districts 6, 7, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 19A, 19B, 20A, 21, 118, and 118.5.

(c) In District 19A, bait nets may be used only to take anchovies, queenfish, white croakers, sardines, mackerel, squid, and smelt for live bait purposes only. Bait nets may not be used within 750 feet of Seal Beach Pier or Belmont Pier.

(d) No other species of fish may be taken on any boat carrying a bait net in District 19A, except that loads or lots of fish may contain not more than 18 percent, by weight of the fish, of other bait fish species taken incidentally to other fishing operations and that are mixed with other fish in the load or lot.

CHAPTER 465

An act to add and repeal Section 316.5 to the Public Utilities Code, relating to the Public Utilities Commission.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 316.5 is added to the Public Utilities Code, to read:

316.5. In order to enhance fair competition and promote deregulation in the telecommunications industry, the commission shall submit a report to the Legislature, on or before October 31 of each year, that includes all of the following:

(a) A report on the status of competition in the telecommunications marketplace.

(b) A report on significant changes that have occurred in the telecommunications marketplace in the previous year.

(c) A review of any statutes that might impede or discourage competition in, or deregulation of, the telecommunications marketplace.

(d) Recommendations to the Legislature on statutes that should be amended, repealed, or enacted to enhance and reflect the competitive telecommunications environment or promote the orderly deregulation of the telecommunications industry, or both of those things.

(e) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

CHAPTER 466

An act to amend Section 34090.7 of, and to add Section 26202.3 to, the Government Code, relating to local government record retention.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 26202.3 is added to the Government Code, to read:

26202.3. Notwithstanding Section 26202, the board, the governing board of any special district whose membership is the same as the membership of the board of supervisors, or the head of any county public safety communications center may authorize the destruction of recordings of routine video monitoring after one year and may authorize the destruction of recordings of telephone and radio communications maintained by the department or special district after 100 days. The destruction shall be approved by the legislative body and the written consent of the county agency in the manner prescribed in Sections 34090, 34090.5, 34090.6, and 34090.7. In the

event that the recordings are evidence in any claim filed or in any pending litigation, they shall be preserved until the claim or pending litigation is resolved.

SEC. 2. Section 34090.7 of the Government Code is amended to read:

34090.7. Notwithstanding the provisions of Section 34090, the legislative body of a city or county may prescribe a procedure whereby duplicates of city or county records less than two years old may be destroyed if they are no longer required.

For purposes of this section, video recording media, such as videotapes and films, and including recordings of "routine video monitoring" pursuant to Section 34090.6, shall be considered duplicate records if the city or county keeps another record, such as written minutes or an audiotape recording, of the event that is recorded in the video medium. However, a video recording medium shall not be destroyed or erased pursuant to this section for a period of at least 90 days after occurrence of the event recorded thereon.

CHAPTER 467

An act to add Section 17592.5 to the Education Code, relating to regional occupational centers, and making an appropriation therefor.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 17592.5 is added to the Education Code, to read:

17592.5. The Joint Powers Southern California Regional Occupational Center and the Joint Powers Central County Occupational Center shall be deemed to be school districts for purposes of Sections 17582 to 17592, inclusive, and for the purposes of Section 39619.

SEC. 2. 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 joint powers regional occupational centers affected by this act, and that, therefore, this act is necessary.

CHAPTER 468

An act to repeal and add Sections 470, 475, 476, 484e, 484f, 484g, and 484i of, and to repeal Section 475a of, the Penal Code, relating to financial crimes.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 470 of the Penal Code is repealed.

SEC. 2. Section 470 is added to the Penal Code, to read:

470. (a) Every person who, with the intent to defraud, knowing that he or she has no authority to do so, signs the name of another person or of a fictitious person to any of the items listed in subdivision (d) is guilty of forgery.

(b) Every person who, with the intent to defraud, counterfeits or forges the seal or handwriting of another is guilty of forgery.

(c) Every person who, with the intent to defraud, alters, corrupts, or falsifies any record of any will, codicil, conveyance, or other instrument, the record of which is by law evidence, or any record of any judgment of a court or the return of any officer to any process of any court, is guilty of forgery.

(d) Every person who, with the intent to defraud, falsely makes, alters, forges, or counterfeits, utters, publishes, passes or attempts or offers to pass, as true and genuine, any of the following items, knowing the same to be false, altered, forged, or counterfeited, is guilty of forgery: any check, bond, bank bill, or note, cashier's check, traveler's check, money order, post note, draft, any controller's warrant for the payment of money at the treasury, county order or warrant, or request for the payment of money, receipt for money or goods, bill of exchange, promissory note, order, or any assignment of any bond, writing obligatory, or other contract for money or other property, contract, due bill for payment of money or property, receipt for money or property, passage ticket, lottery ticket or share purporting to be issued under the California State Lottery Act of 1984, trading stamp, power of attorney, certificate of ownership or other document evidencing ownership of a vehicle or undocumented vessel, or any certificate of any share, right, or interest in the stock of any corporation or association, or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing, or acquittance, release or discharge of any debt, account, suit, action, demand, or any other thing, real or personal, or any transfer or assurance of money, certificate of shares of stock, goods, chattels, or other property whatever, or any letter of attorney, or other power to receive money, or to receive or transfer certificates of shares of stock or annuities, or to let, lease, dispose of, alien, or

convey any goods, chattels, lands, or tenements, or other estate, real or personal; or any matter described in subdivision (b).

(e) Upon a trial for forging any bill or note purporting to be the bill or note of an incorporated company or bank, or for passing, or attempting to pass, or having in possession with intent to pass, any forged bill or note, it is not necessary to prove the incorporation of the bank or company by the charter or act of incorporation, but it may be proved by general reputation; and persons of skill are competent witnesses to prove that the bill or note is forged or counterfeited.

SEC. 3. Section 475 of the Penal Code is repealed.

SEC. 4. Section 475 is added to the Penal Code, to read:

475. (a) Every person who possesses or receives, with the intent to pass or facilitate the passage or utterance of any forged, altered, or counterfeit items, or completed items contained in subdivision (d) of Section 470 with intent to defraud, knowing the same to be forged, altered, or counterfeit, is guilty of forgery.

(b) Every person who possesses any blank or unfinished check, note, bank bill, money order, or traveler's check, whether real or fictitious, with the intention of completing the same or the intention of facilitating the completion of the same, in order to defraud any person, is guilty of forgery.

(c) Every person who possesses any completed check, money order, traveler's check, warrant or county order, whether real or fictitious, with the intent to utter or pass or facilitate the utterance or passage of the same, in order to defraud any person, is guilty of forgery.

SEC. 5. Section 475a of the Penal Code is repealed.

SEC. 6. Section 476 of the Penal Code is repealed.

SEC. 7. Section 476 is added to the Penal Code, to read:

476. Every person who makes, passes, utters, or publishes, with intent to defraud any other person, or who, with the like intent, attempts to pass, utter, or publish, or who has in his or her possession, with like intent to utter, pass, or publish, any fictitious or altered bill, note, or check, purporting to be the bill, note, or check, or other instrument in writing for the payment of money or property of any real or fictitious financial institution as defined in Section 186.9 is guilty of forgery.

SEC. 8. Section 484e of the Penal Code is repealed.

SEC. 9. Section 484e is added to the Penal Code, to read:

484e. (a) Every person who, with intent to defraud, sells, transfers, or conveys, an access card, without the cardholder's or issuer's consent, is guilty of grand theft.

(b) Every person, other than the issuer, who within any consecutive 12-month period, acquires access cards issued in the names of four or more persons which he or she has reason to know were taken or retained under circumstances which constitute a violation of subdivision (a), (c), or (d) is guilty of grand theft.

(c) Every person who, with the intent to defraud, acquires or retains possession of an access card without the cardholder's or issuer's consent, with intent to use, sell, or transfer it to a person other than the cardholder or issuer is guilty of petty theft.

(d) Every person who acquires or retains possession of access card account information with respect to an access card validly issued to another person, without the cardholder's or issuer's consent, with the intent to use it fraudulently, is guilty of grand theft.

SEC. 10. Section 484f of the Penal Code is repealed.

SEC. 11. Section 484f is added to the Penal Code, to read:

484f. (a) Every person who, with the intent to defraud, designs, makes, alters, or embosses a counterfeit access card or utters or otherwise attempts to use a counterfeit access card is guilty of forgery.

(b) A person other than the cardholder or a person authorized by him or her who, with the intent to defraud, signs the name of another or of a fictitious person to an access card, sales slip, sales draft, or instrument for the payment of money which evidences an access card transaction, is guilty of forgery.

SEC. 12. Section 484g of the Penal Code is repealed.

SEC. 13. Section 484g is added to the Penal Code, to read:

484g. Every person who, with the intent to defraud, (a) uses, for the purpose of obtaining money, goods, services, or anything else of value, an access card or access card account information that has been altered, obtained, or retained in violation of Section 484e or 484f, or an access card which he or she knows is forged, expired, or revoked, or (b) obtains money, goods, services, or anything else of value by representing without the consent of the cardholder that he or she is the holder of an access card and the card has not in fact been issued, is guilty of theft. If the value of all money, goods, services, and other things of value obtained in violation of this section exceeds four hundred dollars ($400) in any consecutive six-month period, then the same shall constitute grand theft.

SEC. 14. Section 484i of the Penal Code is repealed.

SEC. 15. Section 484i is added to the Penal Code, to read:

484i. (a) Every person who possesses an incomplete access card, with intent to complete it without the consent of the issuer, is guilty of a misdemeanor.

(b) Every person who, with the intent to defraud, makes, alters, varies, changes, or modifies access card account information on any part of an access card, including information encoded in a magnetic stripe or other medium on the access card not directly readable by the human eye, or who authorizes or consents to alteration, variance, change, or modification of access card account information by another, in a manner that causes transactions initiated by that access card to be charged or billed to a person other than the cardholder to whom the access card was issued, is guilty of forgery.

(c) Every person who designs, makes, possesses, or traffics in card making equipment or incomplete access cards with the intent that the equipment or cards be used to make counterfeit access cards, is punishable by imprisonment in a county jail for not more than one year, or by imprisonment in the state prison.

SEC. 16. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 469

An act to add Section 22061 to the Financial Code, relating to finance lenders.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 22061 is added to the Financial Code, to read:

22061. (a) This division does not apply to any nonprofit church extension fund.

(b) For purposes of this section:

(1) "Nonprofit church extension fund" means a nonprofit organization affiliated with a church, that is formed for the purpose of making loans to that church's congregational organization or organizations for site acquisitions, new facilities, or improvements to existing facilities, purchased for the benefit of the church congregational organization.

(2) What constitutes a "church" shall be determined from the following criteria, none of which has controlling weight: a distinct legal existence; a recognized creed and form of worship; a definite and distinct ecclesiastical government; a formal code of doctrine and discipline; a distinct religious history; a membership not associated with any other religion or denomination; a complete organization of ordained ministers ministering to their congregations; ordained ministers selected after completing prescribed courses of study; a

literature of its own; established places of worship; regular congregations; regular religious services; schools for the religious instruction of youth; and schools for the preparation of its ministers.

(3) "Church congregational organization" means a group of individuals who gather for the purpose of practicing the religion or manner of worship promulgated by the church with which the organization is affiliated.

(4) "Site acquisitions" means purchases of land intended for use by a church congregational organization.

(5) "New facilities" means purchases of buildings or structures intended for use by a church congregational organization.

(6) "Improvements" means purchases of materials intended to increase the quality of existing religious sites or facilities.

(c) For purposes of this section, a nonprofit church extension fund shall establish that it is exempt from federal taxation pursuant to Section 501 of Title 26 of the United States Code.

(d) For purposes of this section, no individual may be held responsible for the repayment of any loan made by a nonprofit church extension fund.

CHAPTER 470

An act to amend Sections 8855, 27000.8, and 27000.9 of, and to add Section 8858 to, the Government Code, relating to the California Debt and Investment Advisory Commission.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 8855 of the Government Code is amended to read:

8855. (a) There is created the California Debt and Investment Advisory Commission, consisting of nine members, selected as follows:

(1) The Treasurer, or his or her designee.

(2) The Governor or the Director of Finance.

(3) The Controller, or his or her designee.

(4) Two local government finance officers appointed by the Treasurer, one each from among persons employed by a county and by a city or a city and county of this state, experienced in the issuance and sale of municipal bonds and nominated by associations affiliated with these agencies.

(5) Two Members of the Assembly appointed by the Speaker of the Assembly.

(6) Two Members of the Senate appointed by the Senate Committee on Rules.

(b) (1) The term of office of an appointed member is four years, but appointed members serve at the pleasure of the appointing power. In case of a vacancy for any cause, the appointing power shall make an appointment to become effective immediately for the unexpired term.

(2) Any legislators appointed to the commission shall meet with and participate in the activities of the commission to the extent that the participation is not incompatible with their respective positions as Members of the Legislature. For purposes of this chapter, the Members of the Legislature shall constitute a joint interim legislative committee on the subject of this chapter.

(c) The Treasurer shall serve as chairperson of the commission and shall preside at meetings of the commission. The commission, on or after January 1, 1982, and annually thereafter, shall elect from its members a vice chairperson and a secretary who shall hold office until the next ensuing December 31 and shall continue to serve until their respective successors are elected.

(d) Appointed members of the commission shall not receive a salary, but shall be entitled to a per diem allowance of fifty dollars ($50) for each day's attendance at a meeting of the commission not to exceed three hundred dollars ($300) in any month, and reimbursement for expenses incurred in the performance of their duties under this chapter, including travel and other necessary expenses.

(e) The commission shall do all of the following:

(1) Assist all state financing authorities and commissions in carrying out their responsibilities as prescribed by law, including assistance with respect to federal legislation pending in Congress.

(2) Upon request of any state or local government units, to assist them in the planning, preparation, marketing, and sale of new debt issues to reduce cost and to assist in protecting the issuer's credit.

(3) Collect, maintain, and provide comprehensive information on all state and all local debt authorization, sold and outstanding, and serve as a statistical clearinghouse for all state and local debt issues. This information shall be readily available upon request by any public official or any member of the public.

(4) Maintain contact with state and municipal bond issuers, underwriters, credit rating agencies, investors, and others to improve the market for state and local government debt issues.

(5) Undertake or commission studies on methods to reduce the costs and improve credit ratings of state and local issues.

(6) Recommend changes in state laws and local practices to improve the sale and servicing of state and local debts.

(7) Establish a continuing education program for local officials having direct or supervisory responsibility over municipal investments, and undertake other activities conducive to the

disclosure of investment practices and strategies for oversight purposes.

(f) The commission may adopt bylaws for the regulation of its affairs and the conduct of its business.

(g) The issuer of any proposed new debt issue of state or local government shall, no later than 30 days prior to the sale of any debt issue at public or private sale, give written notice of the proposed sale to the commission, by mail, postage prepaid. This subdivision shall also apply to any nonprofit public benefit corporation incorporated for the purpose of acquiring student loans.

(h) The notice shall include the proposed sale date, the name of the issuer, the type of debt issue, and the estimated principal amount thereof. Failure to give this notice shall not affect the validity of the sale.

(i) The issuer of any new debt issue of state or local government, not later than 45 days after the signing of the bond purchase contract in a negotiated or private financing, or after the acceptance of a bid in a competitive offering, shall submit a report of final sale to the commission by mail, postage prepaid, or by any other method approved by the commission. A copy of the final official statement for the issue shall accompany the report of final sale. The commission may require information to be submitted in the report of final sale that it considers appropriate.

(j) The commission shall publish a monthly newsletter describing and evaluating the operations of the commission during the preceding month.

(k) The commission shall meet on the call of the chairperson, or at the request of a majority of the members, or at the request of the Governor. A majority of all nonlegislative members of the commission constitutes a quorum for the transaction of business.

(*l*) All administrative and clerical assistance required by the commission shall be furnished by the office of the Treasurer.

SEC. 2. Section 8858 is added to the Government Code, to read:

8858. Notwithstanding Section 7550.5, the commission shall prepare an annual report compiling and detailing the total amount of outstanding state and local public debt and examining recent trends in the composition of that outstanding debt. The report shall reflect all bonded indebtedness issued by governmental entities, including, but not limited to, the state and state authorities, school districts, cities, counties, city and counties, special districts, joint powers agencies, redevelopment agencies, and community college districts. The commission shall obtain the information for this report from existing sources, including the Controller, the State Department of Education, and the Chancellor's office of the California Community Colleges, and these agencies shall assist the commission in carrying out this section.

SEC. 3. Section 27000.8 of the Government Code is amended to read:

27000.8. Any duly elected county treasurer, county tax collector, or county treasurer-tax collector serving in that office on January 1, 1996, may serve for his or her remaining term of office during which period of time the requirements of this section shall not apply. After the election of a county treasurer, county tax collector, or county treasurer-tax collector to office, that person shall complete a valid continuing course of study as prescribed in this section, and shall during the person's four-year term of office on or before June 30 of the fourth year, render to the State Controller a certification indicating that the person has successfully completed a continuing education program consisting of, at a minimum, 48 hours, or an equivalent amount of continuing education units within the discipline of treasury management or public finance or both, offered by a recognized state or national association, institute, or accredited college or university, or the California Debt and Investment Advisory Commission, that provides the requisite educational programs prescribed in this section. The willful or negligent failure of any elected county treasurer, county tax collector, or county treasurer-tax collector to comply with the requirements of this section shall be deemed a violation of this section.

SEC. 4. Section 27000.9 of the Government Code is amended to read:

27000.9. Notwithstanding any other requirement of law, any duly appointed county officer serving in the capacity of county treasurer, county tax collector, or county treasurer-tax collector shall, beginning in 2000, complete a valid continuing course of study as prescribed in this section, and shall, on or before June 30 of each two-year period, render to the State Controller, a certification indicating that the county officer has successfully completed a continuing education program consisting of, at a minimum, 24 hours or an equivalent amount of continuing education units within the discipline of treasury management or public finance, or both offered by a recognized state or national association, institute, or accredited college or university, or the California Debt and Investment Advisory Commission, that provides the requisite educational programs prescribed in this section. The willful or negligent failure of any county officer serving in the capacity of county treasurer, county tax collector, or county treasurer-tax collector to comply with the requirements of this section shall be deemed a violation of this section.

CHAPTER 471

An act to amend Section 27315 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 27315 of the Vehicle Code is amended to read:

27315. (a) The Legislature finds that a mandatory seatbelt law will contribute to reducing highway deaths and injuries by encouraging greater usage of existing manual seatbelts, that automatic crash protection systems which require no action by vehicle occupants offer the best hope of reducing deaths and injuries, and that encouraging the use of manual safety belts is only a partial remedy for addressing this major cause of death and injury. The Legislature declares that the enactment of this section is intended to be compatible with support for federal safety standards requiring automatic crash protection systems and should not be used in any manner to rescind federal requirements for installation of automatic restraints in new cars.

(b) This section shall be known and may be cited as the Motor Vehicle Safety Act.

(c) As used in this section, "motor vehicle" means any passenger vehicle or any motortruck or truck tractor, but does not include a motorcycle.

(d) (1) No person shall operate a motor vehicle on a highway unless that person and all passengers 16 years of age or over are properly restrained by a safety belt. This paragraph does not apply to the operator of a taxicab, as defined in Section 27908, when the taxicab is driven on a city street and is engaged in the transportation of a fare-paying passenger. The safety belt requirement established by this paragraph is the minimum safety standard applicable to employees being transported in a motor vehicle. This paragraph does not preempt any more stringent or restrictive standards imposed by the Labor Code or any other state or federal regulation regarding the transportation of employees in a motor vehicle.

(2) The operator of a limousine for hire or the operator of an authorized emergency vehicle, as defined in subdivision (a) of Section 165, shall not operate the limousine for hire or authorized emergency vehicle unless the operator and any passengers four years of age or over and weighing 40 pounds or more, in the front seat are properly restrained by a safety belt.

(3) The operator of a taxicab shall not operate the taxicab unless any passengers four years of age or over and weighing 40 pounds or more, in the front seat are properly restrained by a safety belt.

(e) No person 16 years of age or over shall be a passenger in a motor vehicle on a highway unless that person is properly restrained by a safety belt. This subdivision does not apply to a passenger in a

sleeper berth, as defined in subdivision (v) of Section 1201 of Title 13 of the California Code of Regulations.

(f) Every owner of a motor vehicle, including every owner or operator of a taxicab, as defined in Section 27908, or a limousine for hire, operated on a highway shall maintain safety belts in good working order for the use of occupants of the vehicle. The safety belts shall conform to motor vehicle safety standards established by the United States Department of Transportation. This subdivision does not, however, require installation or maintenance of safety belts where not required by the laws of the United States applicable to the vehicle at the time of its initial sale.

(g) This section does not apply to a passenger or operator with a physically disabling condition or medical condition which would prevent appropriate restraint in a safety belt, if the condition is duly certified by a licensed physician and surgeon or by a licensed chiropractor who shall state the nature of the condition, as well as the reason the restraint is inappropriate. This section also does not apply to a public employee, when in an authorized emergency vehicle as defined in paragraph (1) of subdivision (b) of Section 165, or to any passenger in any seat behind the front seat of an authorized emergency vehicle as defined in paragraph (1) of subdivision (b) of Section 165 operated by the public employee, unless required by the agency employing the public employee.

(h) Notwithstanding subdivision (a) of Section 42001, any violation of subdivision (d), (e), or (f) is an infraction punishable by a fine, including all penalty assessments and court costs imposed on the convicted person, of not more than twenty dollars ($20) for a first offense, and a fine, including all penalty assessments and court costs imposed on the convicted person, of not more than fifty dollars ($50) for each subsequent offense. In lieu of the fine and any penalty assessment or court costs, the court, pursuant to Section 42005, may order that a person convicted of a first offense attend a school for traffic violators or a driving school in which the proper use of safety belts is demonstrated.

(i) For any violation of subdivision (d), (e), or (f), in addition to the fines provided for pursuant to subdivision (h) and the penalty assessments provided for pursuant to Section 1464 of the Penal Code, an additional penalty assessment of two dollars ($2) shall be levied for any first offense, and an additional penalty assessment of five dollars ($5) shall be levied for any subsequent offense.

All moneys collected pursuant to this subdivision shall be utilized in accordance with Section 1464 of the Penal Code.

(j) In any civil action, a violation of subdivision (d), (e), or (f) or information of a violation of subdivision (h) shall not establish negligence as a matter of law or negligence per se for comparative fault purposes, but negligence may be proven as a fact without regard to the violation.

(k) If the United States Secretary of Transportation fails to adopt safety standards for manual safety belt systems by September 1, 1989, no motor vehicle manufactured after that date for sale or sold in this state shall be registered unless it contains a manual safety belt system which meets the performance standards applicable to automatic crash protection devices adopted by the Secretary of Transportation pursuant to Federal Motor Vehicle Safety Standard No. 208 (49 C.F.R. 571.208) as in effect on January 1, 1985.

(*l*) Each motor vehicle offered for original sale in this state which has been manufactured on or after September 1, 1989, shall comply with the automatic restraint requirements of Section S4.1.2.1 of Federal Motor Vehicle Safety Standard No. 208 (49 C.F.R. 571.208), as published in Volume 49 of the Federal Register, No. 138, page 29009. Any automobile manufacturer who sells or delivers a motor vehicle subject to the requirements of this subdivision, and fails to comply with this subdivision, shall be punished by a fine of not more than five hundred dollars ($500) for each sale or delivery of a noncomplying motor vehicle.

(m) Compliance with subdivision (k) or (*l*) by a manufacturer shall be made by self-certification in the same manner as self-certification is accomplished under federal law.

(n) This section does not apply to a person actually engaged in delivery of newspapers to customers along the person's route if the person is properly restrained by a safety belt prior to commencing and subsequent to completing delivery on the route.

(o) This section does not apply to a person actually engaged in collection and delivery activities as a rural delivery carrier for the United States Postal Service if the person is properly restrained by a safety belt prior to stopping at the first box and subsequent to stopping at the last box on the route.

(p) Subdivisions (d), (e), (f), (g), and (h) shall become inoperative immediately upon the date that the United States Secretary of Transportation, or his or her delegate, determines to rescind the portion of the Federal Motor Vehicle Safety Standard No. 208 (49 C.F.R. 571.208) which requires the installation of automatic restraints in new motor vehicles, except that those subdivisions shall not become inoperative if the secretary's decision to rescind that Standard No. 208 is not based, in any respect, on the enactment or continued operation of those subdivisions.

SEC. 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 472

An act to amend Section 2800.2 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 2800.2 of the Vehicle Code is amended to read:

2800.2. (a) If a person flees or attempts to elude a pursuing peace officer in violation of Section 2800.1 and the pursued vehicle is driven in a willful or wanton disregard for the safety of persons or property, the person driving the vehicle, upon conviction, shall be punished by imprisonment in the state prison, or by confinement in the county jail for not less than six months nor more than one year. The court may also impose a fine of not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000), or may impose both that imprisonment or confinement and fine.

(b) For purposes of this section, a willful or wanton disregard for the safety of persons or property includes, but is not limited to, driving while fleeing or attempting to elude a pursuing peace officer during which time either three or more violations that are assigned a traffic violation point count under Section 12810 occur, or damage to property occurs.

SEC. 2. The Department of the California Highway Patrol may undertake a statewide publicity campaign to convey to the citizens of this state the seriousness of the offense of fleeing peace officers in violation of Section 2800.1 of the Vehicle Code and the penalties for violating that section as set forth in Sections 2800.2 and 2800.3 of the Vehicle Code. The department may undertake the publicity campaign only if grant funds or other moneys, that are in addition to the department's ongoing operating budget, are provided in sufficient amounts to fund the campaign.

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 473

An act to amend Section 395 of the Code of Civil Procedure, and to add Section 2894.10 to the Public Utilities Code, relating to public utilities.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 395 of the Code of Civil Procedure is amended to read:

395. (a) Except as otherwise provided by law and subject to the power of the court to transfer actions or proceedings as provided in this title, the county in which the defendants or some of them reside at the commencement of the action is the proper county for the trial of the action. If the action is for injury to person or personal property or for death from wrongful act or negligence, either the county where the injury occurs or the injury causing death occurs or the county in which the defendants, or some of them reside at the commencement of the action, shall be a proper county for the trial of the action. In a proceeding for dissolution of marriage, the county in which either the petitioner or respondent has been a resident for three months next preceding the commencement of the proceeding is the proper county for the trial of the proceeding. In a proceeding for nullity of marriage or legal separation of the parties, the county in which either the petitioner or the respondent resides at the commencement of the proceeding is the proper county for the trial of the proceeding. In a proceeding to enforce an obligation of support under Section 3900 of the Family Code, the county in which the child resides is the proper county for the trial of the action. In a proceeding to establish and enforce a foreign judgment or court order for the support of a minor child, the county in which the child resides is the proper county for the trial of the action. Subject to subdivision (b), when a defendant has contracted to perform an obligation in a particular county, either the county where the obligation is to be performed or in which the contract in fact was entered into or the county in which the defendant or any such defendant resides at the commencement of the action shall be a proper county for the trial of

an action founded on that obligation, and the county in which the obligation is incurred shall be deemed to be the county in which it is to be performed unless there is a special contract in writing to the contrary. If none of the defendants reside in the state or if residing in the state and the county in which they reside is unknown to the plaintiff, the action may be tried in any county which the plaintiff may designate in his or her complaint, and, if the defendant is about to depart from the state, the action may be tried in any county where either of the parties reside or service is made. If any person is improperly joined as a defendant or has been made a defendant solely for the purpose of having the action tried in the county or judicial district where he or she resides, his or her residence shall not be considered in determining the proper place for the trial of the action.

(b) Subject to the power of the court to transfer actions or proceedings as provided in this title, in an action arising from an offer or provision of goods, services, loans or extensions of credit intended primarily for personal, family or household use, other than an obligation described in Section 1812.10 or Section 2984.4 of the Civil Code, or an action arising from a transaction consummated as a proximate result of either an unsolicited telephone call made by a seller engaged in the business of consummating transactions of that kind or a telephone call or electronic transmission made by the buyer or lessee in response to a solicitation by the seller, the county in which the buyer or lessee in fact signed the contract, the county in which the buyer or lessee resided at the time the contract was entered into, or the county in which the buyer or lessee resides at the commencement of the action, is the proper county for the trial thereof.

(c) If within the county there is a municipal or justice court having jurisdiction of the subject matter established, in the cases mentioned in subdivision (a), in the judicial district in which the defendant or any defendant resides, in which the injury to person or personal property or the injury causing death occurs, or, in which the obligation was contracted to be performed or, in cases mentioned in subdivision (b), in the judicial district which the buyer or lessee resides, in which the buyer or lessee in fact signed the contract, in which the buyer or lessee resided at the time the contract was entered into, or in which the buyer or lessee resides at the commencement of the action, then that court is the proper court for the trial of the action. Otherwise, any municipal or justice court in the county having jurisdiction of the subject matter is a proper court for the trial thereof.

(d) Any provision of an obligation described in subdivision (b) or (c) waiving those subdivisions is void and unenforceable.

SEC. 2. Section 2894.10 is added to the Public Utilities Code, to read:

2894.10. (a) The Legislature finds and declares that a number of federal and state laws have been enacted to protect residential telephone subscribers' privacy rights with respect to telephone solicitations. Various governmental agencies publish information that generally describes telephone subscribers' rights under these laws. Examples of publications include the Federal Trade Commission's brochure, "Straight Talk About Telemarketing," and the Federal Communications Commission's publication, "Consumer News, What You Can Do About Unsolicited Telephone Marketing Calls and Faxes." The Legislature intends that telephone subscribers be provided with information regarding their privacy rights, under state and federal law, with respect to telephone solicitations.

(b) Every local exchange telephone corporation shall provide its residential customers with information regarding state and federal laws that protect the privacy rights of residential telephone subscribers with respect to telephone solicitations by providing on an annual basis one or more of the following items of information in the billing statement of each residential customer and in conspicuous notices in the consumer information pages of the local telephone directories distributed by that telephone corporation:

(1) A copy of a publication prepared by the Department of Consumer Affairs, the Public Utilities Commission, the Federal Trade Commission, or any other federal or state governmental agency that generally describes telephone subscribers' privacy rights, under state and federal laws, with respect to telephone solicitations.

(2) A list of the titles of the publications identified in paragraph (1) and information on how to obtain those publications.

(c) A provider of local exchange service shall not be subject to any penalties if the provider makes a good faith effort to provide or identify the publications described in subdivision (b).

CHAPTER 474

An act to add Section 1421.5 to the Health and Safety Code, relating to long-term health care facilities.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 1421.5 is added to the Health and Safety Code, to read:

1421.5. (a) (1) Within 24 hours of the filing of a bankruptcy petition under Title 11 of the United States Code or any other laws of the United States, by any person or entity holding a controlling

interest in a long-term health care facility, the licensee of the long-term health care facility shall provide written notification to the department of the filing of the petition and the location of the court in which the petition was filed. The written notification may be provided to the department by telephone facsimile or overnight mail.

(2) Within 24 hours of the appointment of a trustee by the bankruptcy court, the long-term health care facility shall provide written notification to the department of the name, address, and telephone number of the trustee. The written notification may be provided to the department by telephone facsimile or overnight mail.

(3) The department shall provide written notification to the trustee of the requirements of operating a licensed long-term health care facility within three days of being notified of the appointment of the trustee. The contents of this written notice may be provided to the trustee by telephone facsimile or overnight mail and shall include, but not be limited to, all of the following:

(A) The trustee is required to manage and operate the long-term health care facility according to the requirements of state law, in the same manner that the owner or possessor of the facility would be required to manage and operate the facility, including, but not limited to, complying with Article 8.5 (commencing with Section 1336) of Chapter 2, Chapter 3.9 (commencing with Section 1599), and Sections 72527, 73523, and 76525 of Title 22 of the California Code of Regulations.

(B) The transfer of patients pursuant to the liquidation of a licensed long-term health care facility presents a compelling public health and safety risk, and the trustee will not be exempted from complying with applicable state law for any reason.

(b) (1) As mandated by subdivision (b) of Section 959 of Title 28 of the United States Code, an individual appointed as a trustee in a bankruptcy proceeding described in this section that involves any person or entity holding a controlling interest in a long-term health care facility shall comply with all state licensing and federal certification requirements applicable to the long-term health care facility, including, but not limited to, those governing patient rights, transfer or discharge, and facility closure. The transfer of patients pursuant to the liquidation of a licensed long-term health care facility presents a compelling public health and safety risk, and a trustee shall not be exempted from complying with applicable state law for any reason.

(2) If a trustee fails to comply with the state licensing requirements applicable to a long-term health care facility, the department shall report the trustee's actions to the bankruptcy court and intervene as appropriate to ensure continued facility compliance with those requirements.

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 475

An act to amend Sections 715, 731, 734, and 737 of, and to add Section 735.1 to, the Harbors and Navigation Code, to amend Section 650 of the Unemployment Insurance Code, and to amend Section 9863 of the Vehicle Code, relating to boats.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 715 of the Harbors and Navigation Code is amended to read:

715. Within one month after the closing of a transaction in which title to a yacht is conveyed from a seller to a purchaser through a licensed broker, the licensee shall provide, or cause to be provided to the seller and purchaser, a closing statement in writing of the selling price thereof, including all charges and credits which shall be itemized, and in the event an exchange of yachts is involved, the information shall include a description of the yachts and amount of added money consideration, if any. The licensee shall affix his or her signature to the closing statement to attest to the facts provided in the closing statement. If the transaction is closed through escrow and the escrowholder renders a closing statement which reveals the information, that shall be deemed compliance with this section on the part of the licensed broker.

SEC. 2. Section 731 of the Harbors and Navigation Code is amended to read:

731. (a) A cash deposit given instead of the bond required by Section 730 shall be held by the department during the life of the license and for a period of four years after the expiration of the license.

(b) If an action is commenced on the cash deposit of a licensed broker pursuant to subdivision (a), the department may require the filing of an additional cash deposit, and immediately, upon the recovery in any action on the deposit, the broker described therein shall file a new cash deposit, equal to the amount specified in the action or recovery, but no greater than the amount specified in subdivision (a) of Section 730, whichever is less. Failure to file an additional cash deposit within 30 days after notification that an additional cash deposit is required by reason of an action filed against the cash deposit, or after the recovery on a cash deposit, shall constitute a failure to comply with this article, in which case the department may suspend the license of the licensed broker whose cash deposit has been acted on, or where a cash deposit recovery has been made.

SEC. 3. Section 734 of the Harbors and Navigation Code is amended to read:

734. (a) The department shall not deny, suspend, or revoke a license granted under this article without a hearing, except the department may suspend a license without a hearing for failure of a broker to maintain a bond as specified in subdivision (d) of Section 730, or for failure of a broker to make available to the department, for inspection, any records, as set forth in Section 735.1.

(b) The department may upon its own motion, and shall upon the verified written complaint of any person which sets forth facts which could be grounds for the denial, suspension, or revocation of a license pursuant to this article, investigate the actions of any broker or salesman whether or not licensed.

(c) The suspension, expiration, or revocation by operation of law of a license issued by the department, or its surrender, whether voluntary or not, does not deprive the department of its authority, during the period in which the license may be renewed, reinstated, or reissued, to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law, to enter an order suspending or revoking the license, or to take any action against the licensee on any other ground provided by law.

(d) A broker whose license has been suspended pursuant to subdivision (a) for failure to make records available to the department for inspection, may request that an expedited hearing be held within 30 days of the suspension before an administrative law judge to appeal the suspension. Upon a showing of good cause to reinstate the license, the broker's license shall be reinstated. If no good cause is found, the broker's license may be revoked.

(e) (1) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding under this article, the department may request the administrative law judge to direct a licensee found to have committed a violation or violations of this article to pay a sum not to exceed the reasonable costs of the investigation, prosecution, and enforcement of the case.

For purposes of this paragraph, "reasonable costs" shall include, but not be limited to, all of the following:

(A) Attorney, paralegal, and investigator fees and costs, including salary, travel, and other expenses attributable to hours expended on the case by employees of the office of the Attorney General and the department.

(B) Witness fees, travel, and other expenses paid to or in connection with witnesses to facilitate their attendance and testimony at the disciplinary proceeding or to facilitate their appearance at a deposition, by video or by other means.

(C) Fees and costs attributable to expert review, including, but not limited to, laboratory analysis, physical examination, and psychological examination, whether by an independent expert or a staff member of the department.

(D) Administrative expenses attributable to case preparation and presentation, including, but not limited to, exhibit preparation and document copying, postage, telephone calls, word processing, whether by an independent contractor or a staff member of the department, and costs for obtaining certified public documents.

(2) In the case of a disciplined licensee that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(3) A declaration under penalty of perjury of the actual costs, or a good faith estimate of costs if the actual costs are not available, signed by the director, and containing sufficient information by which the administrative law judge can determine the costs incurred in connection with the matter and the reasonableness of the costs, shall be prima facie evidence of reasonable costs of investigation, prosecution, and enforcement of the case.

(4) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to paragraph (1). The department may reduce or eliminate the award of any costs by the administrative law judge, and may request the administrative law judge to reconsider his or her decision if the proposed decision does not make a finding on costs as requested pursuant to paragraph (1).

(5) Where an order for recovery of costs is made and timely payment is not made as directed, the department may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the department may have as to any licensee to pay costs.

(6) In any action for recovery of costs, proof of the department's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(7) The department shall not renew or reinstate the license of any licensee who does not pay all of the costs ordered under this section.

(8) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the Harbors and Watercraft Revolving Fund.

(9) Nothing in this section shall preclude the department from including the recovery of the costs of investigation, prosecution, and enforcement of a case in any stipulated settlement.

SEC. 4. Section 735.1 is added to the Harbors and Navigation Code, to read:

735.1. A licensed broker shall retain, for four years, copies of all listings, deposit receipts, canceled checks, trust records, and other documents executed or obtained by the broker in connection with a transaction for which a broker's license is required. These records shall be made available to the department for inspection upon request. If the records have not been made available within 30 days of a request by the department, the department may subpoena the requested records. If the records have not been made available within 14 days from the requested day of production on the subpoena, and the director determines that the public may be at risk if the broker continues to be licensed, the department may suspend the broker's license pursuant to Section 734.

SEC. 5. Section 737 of the Harbors and Navigation Code is amended to read:

737. (a) The proceedings and hearings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, including the right of judicial review as provided for in Section 11523 of the Government Code.

(b) In addition to any other disciplinary action and in lieu of a separate action in civil court, the department, as part of a disciplinary hearing conducted by an administrative law judge, may impose a civil penalty as provided in Section 739.

SEC. 6. Section 650 of the Unemployment Insurance Code is amended to read:

650. "Employment" does not include services performed as a real estate, mineral, oil and gas, or cemetery broker or as a real estate, cemetery or direct sales salesperson, or a yacht broker or salesman, by an individual if all of the following conditions are met:

(a) The individual is licensed under the provisions of Chapter 19 (commencing with Section 9600) of Division 3 of, or Part 1 (commencing with Section 10000) of Division 4 of, the Business and Professions Code, Article 2 (commencing with Section 700) of Chapter 5 of Division 3 of the Harbors and Navigation Code, or is engaged in the trade or business of primarily inperson demonstration and sales presentation of consumer products, including services or other intangibles, in the home or sales to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis, for resale by the buyer or any other person in the home or otherwise than from a retail or wholesale establishment.

(b) Substantially all of the remuneration (whether or not paid in cash) for the services performed by that individual is directly related to sales or other output (including the performance of services) rather than to the number of hours worked by that individual.

(c) The services performed by the individual are performed pursuant to a written contract between that individual and the person for whom the services are performed and the contract provides that the individual will not be treated as an employee with respect to those services for state tax purposes.

SEC. 7. Section 9863 of the Vehicle Code is amended to read:

9863. All fees received, except moneys collected under Section 9875, pursuant to this chapter shall be deposited in the Harbors and Watercraft Revolving Fund and, notwithstanding Section 13340 of the Government Code, are continuously appropriated, without regard to fiscal years, for the administration of this chapter by the department. Any funds in the Harbors and Watercraft Revolving Fund derived pursuant to this chapter in excess of the amount determined by the Director of Finance, from time to time, to be necessary for expenditure for the administration of this chapter, notwithstanding Section 13340 of the Government Code, are continuously appropriated to the Department of Boating and Waterways, without regard to fiscal years, for expenditure in accordance with Section 663.7 of the Harbors and Navigation Code.

CHAPTER 476

An act to amend Sections 26708 and 26708.5 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 26708 of the Vehicle Code is amended to read:

26708. (a) (1) No person shall drive any motor vehicle with any object or material placed, displayed, installed, affixed, or applied upon the windshield or side or rear windows.

(2) No person shall drive any motor vehicle with any object or material placed, displayed, installed, affixed, or applied in or upon the vehicle which obstructs or reduces the driver's clear view through the windshield or side windows.

(3) This subdivision applies to a person driving a motor vehicle with the driver's clear vision through the windshield, or side or rear windows, obstructed by snow or ice.

(b) This section does not apply to any of the following:

(1) Rearview mirrors.

(2) Adjustable nontransparent sunvisors which are mounted forward of the side windows and are not attached to the glass.

(3) Signs, stickers, or other materials which are displayed in a 7-inch square in the lower corner of the windshield farthest removed from the driver, signs, stickers, or other materials which are displayed in a 7-inch square in the lower corner of the rear window farthest removed from the driver, or signs, stickers, or other materials which are displayed in a 5-inch square in the lower corner of the windshield nearest the driver.

(4) Side windows which are to the rear of the driver.

(5) Direction, destination, or termini signs upon a passenger common carrier motor vehicle or a schoolbus, if those signs do not interfere with the driver's clear view of approaching traffic.

(6) Rear window wiper motor.

(7) Rear trunk lid handle or hinges.

(8) The rear window or windows, when the motor vehicle is equipped with outside mirrors on both the left- and right-hand sides of the vehicle that are so located as to reflect to the driver a view of the highway through each mirror for a distance of at least 200 feet to the rear of the vehicle.

(9) A clear, transparent lens affixed to the side window opposite the driver on a vehicle greater than 80 inches in width and which occupies an area not exceeding 50 square inches of the lowest corner toward the rear of that window and which provides the driver with a wide-angle view through the lens.

(10) Sun screening devices meeting the requirements of Section 26708.2 installed on the side windows on either side of the vehicle's front seat, if the driver or a passenger in the front seat has in his or her possession a letter or other document signed by a licensed physician and surgeon certifying that the person must be shaded from the sun due to a medical condition, or has in his or her possession a letter or other document signed by a licensed optometrist certifying that the person must be shaded from the sun due to a visual condition. The devices authorized by this paragraph shall not be used during darkness.

(11) An electronic communication device affixed to the center uppermost portion of the interior of a windshield within an area that is not greater than 5 inches square, if the device provides either of the following:

(A) The capability for enforcement facilities of the Department of the California Highway Patrol to communicate with a vehicle equipped with the device.

(B) The capability for electronic toll and traffic management on public or private roads or facilities.

(c) Notwithstanding subdivision (a), transparent material may be installed, affixed, or applied to the topmost portion of the windshield if the following conditions apply:

(1) The bottom edge of the material is at least 29 inches above the undepressed driver's seat when measured from a point 5 inches in front of the bottom of the backrest with the driver's seat in its rearmost and lowermost position with the vehicle on a level surface.

(2) The material is not red or amber in color.

(3) There is no opaque lettering on the material and any other lettering does not affect primary colors or distort vision through the windshield.

(4) The material does not reflect sunlight or headlight glare into the eyes of occupants of oncoming or following vehicles to any greater extent than the windshield without the material.

(d) Notwithstanding subdivision (a), clear, colorless, and transparent material may be installed, affixed, or applied to the front side windows, located to the immediate left and right of the front seat if the following conditions are met:

(1) The material has a minimum visible light transmittance of 88 percent.

(2) The window glazing with the material applied meets all requirements of Federal Motor Vehicle Safety Standard No. 205 (49 C.F.R. 571.205), including the specified minimum light transmittance of 70 percent and the abrasion resistance of AS-14 glazing, as specified in that federal standard.

(3) The material is designed and manufactured to enhance the ability of the existing window glass to block the sun's harmful ultraviolet A rays.

(4) The driver has in his or her possession, or within the vehicle, a certificate signed by the installing company certifying that the windows with the material installed meet the requirements of this subdivision and identifies the installing company and the material's manufacturer by full name and street address, or, if the material was installed by the vehicle owner, a certificate signed by the material's manufacturer certifying that the windows with the material installed according to manufacturer's instructions meets the requirements of this subdivision and identifies the material's manufacturer by full name and street address.

(5) If the material described in this subdivision tears or bubbles, or is otherwise worn to prohibit clear vision, it shall be removed or replaced.

SEC. 2. Section 26708.5 of the Vehicle Code is amended to read:

26708.5. (a) No person shall place, install, affix, or apply any transparent material upon the windshield, or side or rear windows, of any motor vehicle if the material alters the color or reduces the light transmittance of the windshield or side or rear windows, except as provided in subdivision (b), (c), or (d) of Section 26708.

(b) Tinted safety glass may be installed in a vehicle if (1) the glass complies with motor vehicle safety standards of the United States Department of Transportation for safety glazing materials, and (2)

the glass is installed in a location permitted by those standards for the particular type of glass used.

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 477

An act to add Section 995.675 to the Code of Civil Procedure, relating to surety insurers.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 995.675 is added to the Code of Civil Procedure, to read:

995.675. Notwithstanding Sections 995.660 and 995.670, the California Integrated Waste Management Board, the State Water Resources Control Board, and the Department of Toxic Substances Control may require, in order to comply with Subtitle C or Subtitle D of the federal Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.), an admitted surety insurer to be listed in Circular 570 issued by the United States Treasury.

CHAPTER 478

An act to amend Sections 12000, 12001, 12005.5, 12081, and 12101 of the Health and Safety Code, and to amend Sections 31600, 32000.5, and 34631.5 of the Vehicle Code, relating to explosives.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 12000 of the Health and Safety Code is amended to read:

12000. For the purposes of this part, "explosives" means any substance, or combination of substances, the primary or common purpose of which is detonation or rapid combustion, and which is capable of a relatively instantaneous or rapid release of gas and heat, or any substance, the primary purpose of which, when combined with others, is to form a substance capable of a relatively instantaneous or rapid release of gas and heat. "Explosives" includes, but is not limited to, any explosives as defined in Section 841 of Title 18 of the United States Code and published pursuant to Section 55.23 of Title 27 of the Code of Federal Regulations, and any of the following:

(a) Dynamite, nitroglycerine, picric acid, lead azide, fulminate of mercury, black powder, smokeless powder, propellant explosives, detonating primers, blasting caps, or commercial boosters.

(b) Substances determined to be division 1.1, 1.2, 1.3, or 1.6 explosives as classified by the United States Department of Transportation.

(c) Nitro carbo nitrate substances (blasting agent) classified as division 1.5 explosives by the United States Department of Transportation.

(d) Any material designated as an explosive by the State Fire Marshal. The designation shall be made pursuant to the classification standards established by the United States Department of Transportation. The State Fire Marshal shall adopt regulations in accordance with the Government Code to establish procedures for the classification and designation of explosive materials or explosive devices that are not under the jurisdiction of the United States Department of Transportation pursuant to provisions of Section 841 of Title 18 of the United States Code and published pursuant to Section 55.23 of Title 27 of the Code of Federal Regulations that define explosives.

(e) Certain division 1.4 explosives as designated by the United States Department of Transportation when listed in regulations adopted by the State Fire Marshal.

(f) For the purposes of this part, "explosives" does not include any destructive device, as defined in Section 12301 of the Penal Code, nor does it include ammunition or small arms primers manufactured for use in shotguns, rifles, and pistols.

SEC. 2. Section 12001 of the Health and Safety Code is amended to read:

12001. This part does not apply to any of the following:

(a) Any person engaged in the transportation of explosives regulated by, and when subject to, the provisions of Division 14 (commencing with Section 31600) of the Vehicle Code.

(b) Small arms ammunition of .75 caliber or less when designated as a division 1.4 explosive by the United States Department of Transportation.

(c) Fireworks regulated under Part 2 (commencing with Section 12500) of this division, including, but not limited to, special effects pyrotechnics regulated by the State Fire Marshal pursuant to Section 12555.

(d) Any explosives while in the course of transportation via railroad, aircraft, water, or highway when the explosives are in actual movement and under the jurisdiction of and in conformity with regulations adopted by the United States Department of Transportation, United States Coast Guard, or the Federal Aviation Agency. However, no explosives shall be sold, given away, or delivered except as provided in Section 12120.

(e) Special fireworks classified by the United States Department of Transportation as division 1.3 explosives when those special fireworks are regulated under Part 2 (commencing with Section 12500) of this division, when a permit has been issued pursuant to regulations of the State Fire Marshal.

(f) (1) Black powder in quantities of 25 pounds or less in the hands of a retailer having a permit issued under Article 2 (commencing with Section 6066) of Chapter 2 of Part 1 of Division 2 of the Revenue and Taxation Code and in quantities of five pounds or less in the hands of all others and smokeless powder in quantities of 20 pounds or less used, possessed, stored, sold, or transported that is exempted under, or authorized by, the Federal Organized Crime Control Act of 1970 (Public Law 91-452) and applicable federal regulations thereunder.

(2) All cities, counties, and special districts and county service areas providing fire protection shall require retailers in possession of black powder to notify fire authorities.

SEC. 3. Section 12005.5 of the Health and Safety Code is amended to read:

12005.5. (a) This part shall not apply to the possession, handling, storage, transportation, or use of not more than 10 pounds of blasting agents (division 1.5 explosives), two pounds of division 1.1, 1.2, or 1.3 explosives, or 1,000 feet of detonating cord, or any combination thereof, by authorized employees of the Department of Transportation, acting within the scope of their employment, in the pursuit of seismic explorations.

(b) The Department of Transportation may not undertake that seismic exploration, unless the fire authority having jurisdiction in the area of the proposed seismic exploration has received a written notice from the department at least 48 hours prior to the commencement of the seismic exploration. The notice shall include the time and location of the proposed seismic exploration. In addition, the employee supervising the proposed seismic exploration, or his or her designated representative, shall consult with the fire

authority to determine if the proposed handling, storage, transportation, or use of explosives would constitute an unreasonable hazard to life or property. If the fire authority determines that such a hazard would arise, the department shall not engage in that handling, storage, transportation, or use of explosives.

(c) The state shall be strictly liable for any injury to any person or property proximately caused by the handling, storage, transportation, or use of explosives by the Department of Transportation for the purpose of conducting seismic exploration. All claims for damages against the state arising under this section are governed by the procedures set forth in Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code.

SEC. 4. Section 12081 of the Health and Safety Code is amended to read:

12081. Except as limited by Chapter 6 (commencing with Section 140) of Division 1 of the Labor Code and Section 18930, the State Fire Marshal shall prepare and adopt, in accordance with Chapter 3.5 (commencing at Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, reasonable regulations that are not in conflict with this part, relating to the sale, use, handling, possession, and storage of explosives.

The building standards adopted and submitted for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13 and the other regulations adopted by the State Fire Marshal shall do all of the following:

(a) Make reasonable allowances for storage facilities in existence when the regulations become effective. No allowance, however, shall be made for storage facilities which constitute a distinct hazard to life and property, nor shall any allowance be made for storage facilities wherein proper safeguards for the control and security of explosives cannot be maintained.

(b) Be based on performance standards wherever possible.

(c) Make reasonable allowances for the storage of gunpowder for commercial and private use. No allowance, however, shall be made for storage facilities which constitute a distinct hazard to life and property, nor shall any allowance be made for storage facilities wherein proper safeguards for the control and security of explosives cannot be maintained.

(d) Set uniform requirements for the use and handling of explosives that would apply statewide.

(e) The building standards published in the California Building Standards Code relating to storage of explosives and the other regulations adopted by the State Fire Marshal pursuant to this section shall apply uniformly throughout the state, and no city, county, city and county, or other political subdivision of this state, including, but not limited to, a chartered city, county, or city and county, shall adopt

or enforce any ordinance or regulation that is inconsistent with this section.

(f) In making the regulations, the State Fire Marshal shall consider as evidence of generally accepted safety standards the publications of the National Fire Protection Association, the United States Bureau of Mines, the United States Department of Defense, and the Institute of Makers of Explosives.

(g) The regulations shall establish standards relating to the size, form, contents, and location of caution placards to be placed on or near storage facilities for division 1.1, 1.2, and 1.3 explosives as set forth in Article 77 of the Uniform Fire Code of the International Conference of Building Officials and the Western Fire Chiefs Association, Inc. or similar standards that are consistent with the United States Department of Transportation classifications, or for any explosives as defined in Section 841 of Title 18 of the United States Code and published pursuant to Section 55.23 of Title 27 of the Code of Federal Regulations.

SEC. 5. Section 12101 of the Health and Safety Code is amended to read:

12101. (a) No person shall do any one of the following without first having made application for and received a permit in accordance with this section:

(1) Manufacture explosives.

(2) Sell, furnish, or give away explosives.

(3) Receive, store, or possess explosives.

(4) Transport explosives.

(5) Use explosives.

(6) Operate a terminal for handling explosives.

(7) Park or leave standing any vehicle carrying explosives, except when parked or left standing in or at a safe stopping place designated as such by the Department of the California Highway Patrol under Division 14 (commencing with Section 31600) of the Vehicle Code.

(b) Application for a permit shall be made to the appropriate issuing authority.

(c) (1) A permit shall be obtained from the issuing authority having the responsibility in the area where the activity, as specified in subdivision (a), is to be conducted.

(2) If the person holding a valid permit for the use or storage of explosives desires to purchase or receive explosives in a jurisdiction other than that of intended use or storage, the person shall first present the permit to the issuing authority in the jurisdiction of purchase or receipt for endorsement. The issuing authority may include any reasonable restrictions or conditions which the authority finds necessary for the prevention of fire and explosion, the preservation of life, safety, or the control and security of explosives within the authority's jurisdiction. If, for any reason, the issuing authority refuses to endorse the permit previously issued in the area of intended use or storage, the authority shall immediately notify

both the issuing authority who issued the permit and the Department of Justice of the fact of the refusal and the reasons for the refusal.

(3) Every person who sells, gives away, delivers, or otherwise disposes of explosives to another person shall first be satisfied that the person receiving the explosives has a permit valid for that purpose. When the permit to receive explosives indicates that the intended storage or use of the explosives is other than in that area in which the permittee receives the explosives, the person who sells, gives away, delivers, or otherwise disposes of the explosives shall insure that the permit has been properly endorsed by a local issuing authority and, further, shall immediately send a copy of the record of sale to the issuing authority who originally issued the permit in the area of intended storage or use. The issuing authority in the area in which the explosives are received or sold shall not issue a permit for the possession, use, or storage of explosives in an area not within the authority's jurisdiction.

(d) In the event any person desires to receive explosives for use in an area outside of this state, a permit to receive the explosives shall be obtained from the State Fire Marshal.

(e) A permit may include any restrictions or conditions which the issuing authority finds necessary for the prevention of fire and explosion, the preservation of life, safety, or the control and security of explosives.

(f) A permit shall remain valid only until the time when the act or acts authorized by the permit are performed, but in no event shall the permit remain valid for a period longer than one year from the date of issuance of the permit.

(g) Any valid permit which authorizes the performance of any act shall not constitute authorization for the performance of any act not stipulated in the permit.

(h) An issuing authority shall not issue a permit authorizing the transportation of explosives pursuant to this section if the display of placards for that transportation is required by Section 27903 of the Vehicle Code, unless the driver possesses a license for the transportation of hazardous materials issued pursuant to Division 14.1 (commencing with Section 32000) of the Vehicle Code, or the explosives are a hazardous waste or extremely hazardous waste, as defined in Sections 25117 and 25115 of the Health and Safety Code, and the transporter is currently registered as a hazardous waste hauler pursuant to Section 25163 of the Health and Safety Code.

(i) An issuing authority shall not issue a permit pursuant to this section authorizing the handling or storage of division 1.1, 1.2, or 1.3 explosives in a building, unless the building has caution placards which meet the standards established pursuant to subdivision (g) of Section 12081.

(j) (1) A permit shall not be issued to a person who meets any of the following criteria:

(A) He or she has been convicted of a felony.

(B) He or she is addicted to a narcotic drug.

(C) He or she is in a class prohibited by Section 8100 or 8103 of the Welfare and Institutions Code or Section 12021 or 12021.1 of the Penal Code.

(2) For purposes of determining whether a person meets any of the criteria set forth in this subdivision, the issuing authority shall obtain two sets of fingerprints on prescribed cards from all persons applying for a permit under this section and shall submit these cards to the Department of Justice. The Department of Justice shall utilize the fingerprint cards to make inquiries both within this state and to the Federal Bureau of Investigation regarding the criminal history of the applicant identified on the fingerprint card.

This paragraph does not apply to any person possessing a current certificate of eligibility issued pursuant to paragraph (4) of subdivision (a) of Section 12071.

(k) An issuing authority shall inquire with the Department of Justice for the purposes of determining whether a person who is applying for a permit meets any of the criteria specified in subdivision (j). The Department of Justice shall determine whether a person who is applying for a permit meets any of the criteria specified in subdivision (j) and shall either grant or deny clearance for a permit to be issued pursuant to the determination. The Department of Justice shall not disclose the contents of a person's records to any person who is not authorized to receive the information in order to ensure confidentiality.

SEC. 6. Section 31600 of the Vehicle Code is amended to read:

31600. For the purposes of this division "explosive" or "explosives" means any substance, or combination of substances, the primary or common purpose of which is detonation or rapid combustion and which is capable of a relatively instantaneous or rapid release of gas and heat. "Explosive" or "explosives" includes, but is not necessarily limited to, explosives as defined in Section 12000 of the Health and Safety Code, and any of the following:

(a) Dynamite, nitroglycerine, picric acid, lead azide, fulminate of mercury, black powder, smokeless powder, propellant explosives, detonating primers, blasting caps, commercial boosters, ammonium nitrate-fuel oil mixture (blasting agent), or any explosives as defined in Section 841 of Title 18 of the United States Code and published pursuant to Section 55.23 of Title 27 of the Code of Federal Regulations, when transported in a combined load with any explosive, as defined in this section.

(b) Substances determined to be division 1.1, 1.2, 1.3, or 1.6 explosives as classified by the United States Department of Transportation.

(c) "Explosive" or "explosives" does not include small arms ammunition or any other division 1.4 explosive.

(d) This division shall not apply to special fireworks classified by the United States Department of Transportation as division 1.2 or 1.3

explosives when those special fireworks are regulated by and in conformance with Part 2 (commencing with Section 12500) of Division 11 of the Health and Safety Code.

(e) Nothing in this chapter supersedes any regulations for the transportation of hazardous materials as defined in Section 2402.7 or as regulated in Division 14.1 (commencing with Section 32000).

SEC. 7. Section 32000.5 of the Vehicle Code is amended to read:

32000.5. (a) Every motor carrier who directs the transportation of an explosive and, on and after July 1, 1982, any motor carrier who directs the transportation of a hazardous material, who is required to display placards pursuant to Section 27903, and every motor carrier who transports for a fee in excess of 500 pounds of hazardous materials of the type requiring placards pursuant to Section 27903, shall be licensed in accordance with the provisions of this code, unless specifically exempted by this code or regulations adopted pursuant to this code. This license shall be available for examination and shall be displayed in accordance with the regulations adopted by the commissioner.

(b) This division does not apply to any person hauling only hazardous waste, as defined in Section 25115 or 25117 of the Health and Safety Code, and who is registered pursuant to subdivision (a) of Section 25163 of the Health and Safety Code or who is exempt from that registration pursuant to subdivision (b) of that section.

(c) This division does not apply to implements of husbandry, as defined in Section 36000.

(d) This division does not apply to the hauling of division 1.3 explosives classified as special fireworks or to division 1.4 explosives classified as common fireworks by the United States Department of Transportation if those fireworks are transported by a motor carrier under the authority of, and in conformance with, a license issued to the motor carrier by the State Fire Marshal pursuant to Part 2 (commencing with Section 12500) of Division 11 of the Health and Safety Code. In that case, a copy of the license shall be carried in the vehicle and presented to any peace officer upon request.

SEC. 8. 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 persons 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; or 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 subparagraph (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 subparagraph (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 division 1.1, 1.2, or 1.3 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

(b) (1) The protection required under subdivision (a) 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.

(2) The protection required under subdivision (a) 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.

(3) 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.

(4) 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 (3).

(5) 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.

(6) No carrier shall engage in any operation on any public highway of this state during the suspension of its permit.

(7) No motor carrier of property, whose permit has been suspended under paragraph (5) 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.

(8) In order to expedite the processing of 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. 8.5. 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.

Notwithstanding any other provision of law, this section applies to for hire tow trucks with a gross vehicle weight rating (GVWR) of 10,000 pounds or more performing emergency moves.

(2) Every motor carrier of property, as defined in Section 34601, who operates only vehicles under 10,000 pounds 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 persons 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; or 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 subparagraph (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 subparagraph (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 division 1.1, 1.2, or 1.3 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

(b) (1) The protection required under subdivision (a) 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.

(2) The protection required under subdivision (a) 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.

(3) 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.

(4) 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 (3).

(5) 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.

(6) No carrier shall engage in any operation on any public highway of this state during the suspension of its permit.

(7) No motor carrier of property, whose permit has been suspended under paragraph (5) 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.

(8) In order to expedite the processing of 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. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

SEC. 10. Section 8.5 of this bill incorporates amendments to Section 34631.5 of the Vehicle Code proposed by both this bill and AB 2132. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 34631.5 of the Vehicle Code, and (3) this bill is enacted after AB 2132, in which case Section 8 of this bill shall not become operative.

CHAPTER 479

An act to add Section 12316 to the Welfare and Institutions Code, relating to human services.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 12316 is added to the Welfare and Institutions Code, to read:

12316. (a) The City and County of San Francisco may implement a pilot project of not less than three years' duration to implement the provision of pooled services under this article through a modified delivery system in no more than five HUD-subsidized

senior housing facilities owned by nonprofit organizations. If the department deems that a waiver of statutes or regulations is necessary, the pilot project shall be operated in accordance with that waiver. The purpose of the pilot project shall be to improve consumer satisfaction with in-home supportive services.

(b) (1) A pool of providers shall be selected by consumers, site staff, and the county to provide in-home supportive services under the pilot project consistent with the county's uniform assessment of needs as specified in Section 12309.

(2) Authorized nonmedical personal services shall be provided under the pilot project by providers in the pool at the times and frequency appropriate to meet each consumer's need intermittently throughout the course of the day.

(3) A memorandum of understanding between the county and the specific sites shall be signed before the project begins.

(c) (1) Consumers shall sign a disclosure form that explains the consumer's rights and responsibilities as an indication of their election to participate in the pilot project.

(2) Consumers who live in designated senior housing projects shall be offered the option of being serviced by the pilot project. These consumers shall have the option to change that decision at any time.

(d) As a separate consumer option under the pilot project, designated related services shall be provided for several consumers simultaneously.

(e) The county shall monitor the provision of services under the pilot project to ensure that the level and quality of services provided through the pilot project is at least at the same level that would have been provided under the nonpilot project individual provider service delivery as provided in Section 12302.

(f) (1) The department shall, in conjunction with the county, develop a provider timesheet and daily log to track the work performed by providers under the pilot project to ensure appropriate provider payment and to track the work provided for each consumer back to the consumer's authorization.

(2) It is the intent of the Legislature that provider payment be issued by the state's Case Management Information and Payroll System (CMIPS) to each provider who provides services pursuant to the pilot project.

(g) At the end of three years, the county shall evaluate the success of the pilot project implemented under this section. If the pilot project is successful, the department shall, at the county's request, extend the pilot project for an additional two years. The success of the pilot project shall be evaluated based on the following factors:

(1) Consumer satisfaction.

(2) Cost effectiveness.

(3) Average turnover of providers.

(h) In evaluating the project, the county shall ensure all of the following:

(1) An independent, impartial, outside evaluator or a county employee independent of the project shall be used.

(2) If the county decides to employ an outside evaluator, the county shall be responsible for all costs associated with the evaluation.

(3) The department shall approve the evaluation design and plan.

(4) Quarterly progress reports shall be completed.

(5) If a federal waiver is required, the county shall follow federal waiver evaluation criteria requirements.

(i) The department may waive the enforcement of specific statutory requirements, regulations, and standards in the county by formal order of the director pursuant to Section 18204.

(j) The department, in coordination with the Director of Health Services, shall seek any federal waivers or approvals necessary for continued funding of the Personal Care Services Program (PCSP) pursuant to Section 14132.95 of the Welfare and Institutions Code. The State Department of Health Services shall have 30 days from the date of request by the county to make a determination of the need to seek federal approval and, if the department deems the approval to be necessary, to formally request the approval. The implementation of the pilot project shall occur after any necessary federal waivers or approvals are obtained.

(k) The pilot project shall be cost-neutral to the state.

CHAPTER 480

An act to add and repeal Section 21100.7 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 21100.7 is added to the Vehicle Code, to read:

21100.7. (a) Whenever a local authority in the County of Los Angeles authorizes the regulation of traffic for a funeral procession pursuant to paragraph (1) of subdivision (e) of Section 21100, the local authority shall do all of the following:

(1) Issue each funeral escort in that procession an identification card and an official insignia in the form of a patch or badge indicating that the funeral escort is authorized to direct traffic in accordance with the movement of the funeral procession. The local authority shall charge the funeral escort or his or her employer a fee that is

equal to the costs incurred by the authority in issuing that card and insignia.

(2) Require that each vehicle in the funeral procession be clearly marked with a funeral sticker and have its headlights activated.

(3) Require that there be one funeral escort for every 12 vehicles in the procession, except that the escort in charge of the procession shall be authorized to vary this requirement based on traffic conditions and the nature of the route.

(4) Regulate the formal training of funeral escorts relating to traffic control and traffic safety procedures. At a minimum, the regulation shall require providers of funeral escort services to do all of the following:

(A) Provide funeral escorts with not less than 30 hours of formal training on traffic control and traffic safety procedures.

(B) Certify the participation of funeral escorts in not less than 25 funeral processions.

(C) Establish a training manual that includes, but is not limited to, all of the following subjects:

(i) Traffic control and direction.

(ii) Legal responsibilities of funeral escorts.

(iii) Safety requirements for funeral processions.

(iv) Record keeping and reporting of incidents.

(v) Safety and inspection of motorcycles and other funeral escort vehicles.

(b) For the purposes of this section, the following terms have the following meanings:

(1) "Funeral escort" means a uniformed person employed by a mortuary or company to direct the movement of a group of vehicles engaged in a funeral procession.

(2) "Funeral procession" means a group of two or more vehicles traveling in line from a funeral service, whether that funeral service is held at a place of worship or another location, to a transportation facility, cemetery, or crematory.

(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 on or before January 1, 2002, deletes or extends that date.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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 481

An act to add and repeal Section 60200.1 of the Education Code, relating to school instructional materials, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. The Legislature finds and declares that providing textbooks and other instructional materials that are aligned to academic content standards adopted by the State Board of Education in a judicious and systematic fashion is of paramount interest in improving instruction for the 5,700,000 pupils in California. Therefore, it is the intent of the Legislature to assist the State Board of Education in its constitutional duty of adopting textbooks and other instructional materials for kindergarten and grades 1 to 8, inclusive, by allowing restrictions on timelines to be shortened while new materials are being provided in alignment with these academic content standards.

SEC. 2. Section 60200.1 is added to the Education Code, to read:

60200.1. (a) Notwithstanding any other provision of law, the limitation in paragraph (5) of subdivision (c) of Section 60200, which requires that other criteria be approved at least 30 months prior to the date that the materials are to be approved for adoption, shall not apply if all of the following conditions are met:

(1) The criteria adopted are consistent with the content standards adopted by the State Board of Education in each of the four core content areas for which standards are adopted.

(2) The schedule for the adoption of instructional materials requires instructional materials for history and social science to be adopted by March 31, 1999, instructional materials for science to be adopted by March 31, 2000, instructional materials for mathematics

to be adopted by March 31, 2001, and instructional materials for language arts and reading to be adopted by March 31, 2002.

(3) The State Board of Education approves criteria for the adoption of instructional materials in science at least 12 months before the board adopts instructional materials in science.

(4) Except as provided in paragraph (5), the State Board of Education approves the criteria for the adoption of instructional materials for language arts, reading, and mathematics at least 18 months before the board adopts instructional materials in language arts, reading, and mathematics.

(5) The State Board of Education adopts a policy allowing additional submissions and adoptions of instructional materials in language arts, and reading, including spelling, and mathematics to be added to those already adopted if the following conditions are met:

(A) The additional instructional materials cover a course of study, or a substantial portion of a course of study, essential to meeting adopted academic content standards and are aligned with the adopted academic content standards.

(B) At least 120 days is provided from the adoption of the other criteria to submission of the additional instructional materials for review.

(b) This section shall become inoperative on April 1, 2002, and, as of January 1, 2003, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2003, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. The sum of two hundred fifty thousand dollars ($250,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction to provide administrative support to the State Board of Education related to the adoption of basic instructional materials.

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 allow the State Board of Education to adopt, as soon as possible, instructional materials that are aligned with the recently adopted academic content standards, it is necessary that this act take effect immediately.

CHAPTER 482

An act to amend, repeal, and add Section 9105 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 9105 of the Vehicle Code is amended to read:

9105. The fees specified in this code, except fees for duplicate plates, certificates, or cards, need not be paid for any of the following vehicles, that are of a type subject to registration under this code, and that are not used for transportation for hire, compensation, or profit, when owned by any disabled veteran or any Congressional Medal of Honor recipient:

(a) Any passenger motor vehicle.

(b) Any motorcycle.

(c) Any commercial motor vehicle of less than 6,001 pounds unladen weight.

The exemption granted by this section shall not extend to more than one vehicle owned by any disabled veteran or Congressional Medal of Honor recipient. The department may require any disabled veteran applying for an exemption under this section to submit a certificate signed by a physician or surgeon substantiating the disability. Any person applying for an exemption under this section by reason of receiving the Congressional Medal of Honor shall submit satisfactory proof that he or she is a Congressional Medal of Honor recipient.

(d) 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. 2. Section 9105 is added to the Vehicle Code, to read:

9105. (a) The fees specified in this code, except fees for duplicate plates, certificates, or cards, need not be paid for any of the following vehicles, that are of a type subject to registration under this code, and that are not used for transportation for hire, compensation, or profit, when owned by any disabled veteran or any Congressional Medal of Honor recipient:

(1) Any passenger motor vehicle.

(2) Any motorcycle.

(3) Any commercial motor vehicle of less than 8,001 pounds unladen weight.

(b) The exemption granted by subdivision (a) shall not extend to more than one vehicle owned by any disabled veteran or Congressional Medal of Honor recipient. The department may require any disabled veteran applying for an exemption under this section to submit a certificate signed by a physician or surgeon substantiating the disability. Any person applying for an exemption under this section by reason of receiving the Congressional Medal of Honor shall submit satisfactory proof that he or she is a Congressional Medal of Honor recipient.

(c) This section shall become operative on July 1, 1999.

CHAPTER 483

An act to amend Section 14592 of the Welfare and Institutions Code, relating to long-term care.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 14592 of the Welfare and Institutions Code is amended to read:

14592. (a) The director may contract with up to ten demonstration projects to develop risk-based long-term care pilot programs modeled upon On Lok Senior Health Services in San Francisco. The department shall seek necessary federal waivers for each demonstration site pursuant to Section 1115 of the Social Security Act (42 U.S.C.A. Sec. 1315). The director shall not enter into contracts with any demonstration program unless necessary federal waivers are obtained.

(b) The demonstration sites shall be public or private nonprofit organizations providing or having the capacity to provide, as determined by the director, comprehensive health care services on a risk-based capitated basis to frail elderly persons certifiable for institutional care. Implementation of this section shall be in accordance with Section 4118(g)(1)(2) of the federal Omnibus Budget Reconciliation Act of 1987.

CHAPTER 484

An act relating to gang violence, and making an appropriation therefor.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

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

(a) On February 6, 1997, the Centers for Disease Control and Prevention issued a report confirming that the United States has the highest rate of childhood homicide, suicide, and firearms-related

deaths of any of the world's 26 wealthiest nations. Nearly 75 percent of murders of children in the industrialized world occur in this country.

(b) Furthermore, the report documents that younger and younger children are becoming perpetrators of crime as well as victims.

(c) The number of juveniles between the ages of 11 and 17 years, the ages of youth responsible for 99 percent of juvenile arrests, will increase 33 percent in the next 10 years.

(d) However, one program in particular has appeared to make a substantial difference in one community. That program is known as the Communities in Schools of San Fernando program. The emphasis of the program is on improving the self-esteem of juveniles through activities such as organized athletic competitions, job counseling, and an aftercare program that utilizes probation and parole officers. In addition, program staff provide support for the youth by promoting better lifestyles, holding weekly meetings with the youth, and providing outreach through frequent street visits. Moreover, the program has had a key role in establishing a gang peace treaty within their community. This three-year treaty has been credited with reducing gang-related homicides. It is believed that other gang-related activities have also decreased, but additional analysis is needed to verify the full extent of this program's impact.

SEC. 2. The California State University is requested to conduct a study to better evaluate the complete impact the Communities in Schools of San Fernando program and its peace treaty has had on the participating areas with respect to the reduction of gang-related crime. The California State University may select the most appropriate campus to conduct the study. The purpose of the study will be to identify the key elements of the program that are responsible for this program's success for purposes of creating similar programs in other areas of the state that are experiencing gang-related problems. The study shall be completed on or before January 1, 2000, and within one year of its commencement. A report on the results of the study shall be submitted to the Legislature on or before January 1, 2000.

SEC. 3. The sum of one hundred thousand dollars ($100,000) is hereby appropriated from the General Fund to the California State University for allocation to a campus of the California State University for the purpose set forth in Section 2 of this act.

CHAPTER 485

An act to amend Sections 4840, 5040, 5051, 5681, 6009.3, 7507.10, 10085.5, 10133.1, 10133.15, 10133.5, 10145, 10165, 10231, 10231.2, 10232, 10232.1, 10232.4, 10236, 10236.2, 11000.1, 11010.2, 11010.4, 11018.3,

11018.12, 17505.2, 17538, 17762, 19556, 19846A, 19847A, 19942, 22252.5, 23817.5, 24045.14, 24045.15, and 25503.30 of, and to repeal Section 10223 of, the Business and Professions Code, to amend Sections 1714.45 and 2924c of, and to amend and renumber Section 3333.4 of, the Civil Code, to amend Sections 14312, 15052, and 16956 of the Corporations Code, to amend Sections 11301, 17016, 17203.5, 17591, 19116, 27405, 44279.7, 44306, 44308, 44759.4, 52122, 52122.1, 52124, 52181, 52183, 60640, 69621, 69629, and 89010 of, and to amend and renumber Section 17883 of, the Education Code, to amend Sections 3030, 4901, 7552, 7571, 7572, and 7575 of the Family Code, to amend Sections 1505, 13081, and 22050 of the Financial Code, to amend Sections 1348.2, 2052.1, 4600, and 7151 of, and to repeal Section 4606 of, the Fish and Game Code, to amend Section 12803 of, to repeal the heading of Article 2 (commencing with Section 11241) of Chapter 2 of Part 4 of Division 5 of, to repeal the headings of Chapter 4 (commencing with Section 16701) and Chapter 5 (commencing with Section 16801) of Part 1 of Division 9 of, and to repeal the heading of Article 5 (commencing with Section 39461) of Chapter 8 of Part 3 of Division 15 of, the Food and Agricultural Code, to amend Sections 6254, 12940, 15814.26, 15814.27, 21290, 22825.5, 51017.1, 53125, 54902.5, 73759, 75050, and 95022 of, to amend and renumber the heading of Chapter 2.1 (commencing with Section 68650) of Title 8 of, to amend and renumber Sections 68650, 68651, 68652, 68653, 68654, 68655, and 68656 of, to repeal Section 29550.2 of, and to repeal Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of, the Government Code, to repeal Section 651 of the Harbors and Navigation Code, to amend Sections 1206, 1357.52, 1746, 44056, 44401, 102425, and 111940 of, to amend and renumber Sections 40928 and 40929 of, and to amend and renumber the heading of Article 1.5 (commencing with Section 42320) of Chapter 4 of Part 4 of, the Health and Safety Code, to amend Sections 1760.5, 10273.4, 10700, 10841, and 14029 of the Insurance Code, to amend Sections 1295.5, 1776, 1813, 3710.3, 4064, 4600.3, and 5433 of the Labor Code, to amend Section 1011 of the Military and Veterans Code, to amend Sections 290, 290.4, 629.82, 830.3, 1054.2, 1203.1d, 11167.5, and 13764 of the Penal Code, to amend Section 22050 of the Public Contract Code, to amend Sections 6353 and 130051.18 of the Public Utilities Code, to amend Sections 69.5, 95.31, 97.3, 619, 3772.5, 7273, 7284.6, 7284.7, 17053.5, 18804, 18872, 19141.6, 19271, 19533, and 41136 of, and to amend and renumber Section 19721.6 of, the Revenue and Taxation Code, to amend Section 1088.7 of the Unemployment Insurance Code, to amend Sections 12514, 12523.6, and 14602.7 of the Vehicle Code, to amend Sections 1811 and 13274 of the Water Code, to amend Sections 827.6 and 11478.2 of the Welfare and Institutions Code, and to amend Section 3 of Chapter 708 of the Statutes of 1997, relating to maintenance of the codes.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 4840 of the Business and Professions Code is amended to read:

4840. (a) Registered veterinary technicians and unregistered assistants are approved to perform those animal health care services prescribed by law under the supervision of a veterinarian licensed or authorized to practice in this state.

(b) Registered veterinary technicians may perform animal health care services on those animals impounded by a state, county, city, or city and county agency pursuant to the direct order, written order, or telephonic order of a veterinarian licensed or authorized to practice in this state.

(c) Registered veterinary technicians may apply for registration from the federal Drug Enforcement Administration that authorizes the direct purchase of sodium pentobarbital for the performance of euthanasia as provided for in subdivision (d) of Section 4827 without the supervision or authorization of a licensed veterinarian.

SEC. 2. Section 5040 of the Business and Professions Code is amended to read:

5040. The Legislature finds and declares that it is important to inform taxpayers that they may make voluntary contributions to certain funds or programs, as provided on the state income tax return. The Legislature further finds and declares that many taxpayers remain unaware of the voluntary contribution check-offs on the state income tax return. Therefore, it is the intent of the Legislature to encourage all persons who prepare state income tax returns, including accountants, to inform their clients in writing, prior to the completion of any state income tax return, that they may make a contribution to any voluntary contribution check-off on the state income tax return if they so choose.

SEC. 3. Section 5051 of the Business and Professions Code is amended to read:

5051. Except as provided in Sections 5052 and 5053, a person shall be deemed to be engaged in the practice of public accountancy within the meaning and intent of this chapter if he or she does any of the following:

(a) Holds himself or herself out to the public in any manner as one skilled in the knowledge, science, and practice of accounting, and as qualified and ready to render professional service therein as a public accountant for compensation.

(b) Maintains an office for the transaction of business as a public accountant.

(c) Offers to prospective clients to perform for compensation, or who does perform on behalf of clients for compensation, professional

services that involve or require an audit, examination, verification, investigation, certification, presentation, or review of financial transactions and accounting records.

(d) Prepares or certifies for clients reports on audits or examinations of books or records of account, balance sheets, and other financial, accounting and related schedules, exhibits, statements, or reports that are to be used for publication, for the purpose of obtaining credit, for filing with a court of law or with any governmental agency, or for any other purpose.

(e) In general or as an incident to that work, renders professional services to clients for compensation in any or all matters relating to accounting procedure and to the recording, presentation, or certification of financial information or data.

(f) Keeps books, makes trial balances, or prepares statements, makes audits, or prepares reports, all as a part of bookkeeping operations for clients.

(g) Prepares or signs, as the tax preparer, tax returns for clients.

(h) Prepares personal financial or investment plans or provides to clients products or services of others in implementation of personal financial or investment plans.

(i) Provides management consulting services to clients.

The activities set forth in subdivisions (f) to (i), inclusive, are "public accountancy" only when performed by a certified public accountant or public accountant, as defined in this chapter.

A person is not engaged in the practice of public accountancy if the only services he or she engages in are those defined by subdivisions (f) to (i), inclusive, and he or she does not hold himself or herself out, solicit, or advertise for clients using the certified public accountant or public accountant designation. A person is not holding himself or herself out, soliciting, or advertising for clients within the meaning of this section solely by reason of displaying a CPA or PA certificate in his or her office or identifying himself or herself as a CPA or PA on other than signs, advertisements, letterhead, business cards, publications directed to clients or potential clients, or financial or tax documents of a client.

SEC. 4. Section 5681 of the Business and Professions Code is amended to read:

5681. The amount of fees prescribed by this chapter is that fixed by the following schedule:

(a) The application fee for examination shall be fixed by the board in an amount not to exceed four hundred twenty-five dollars ($425).

(b) The fee for an original certificate shall be fixed by the board in an amount not to exceed four hundred dollars ($400), except that, if the certificate is issued less than one year before the date on which it will expire, then the fee shall equal 50 percent of the fee fixed by the board for an original certificate. The board may, by appropriate regulation, provide for the waiver or refund of the initial certificate

fee where the certificate is issued less than 45 days before the date on which it will expire.

(c) The fee for a temporary certificate shall be fixed by the board in an amount not to exceed one hundred dollars ($100).

(d) The fee for a duplicate certificate shall be fixed by the board in an amount not to exceed fifty dollars ($50).

(e) The renewal fee shall be fixed by the board in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, but not to exceed four hundred dollars ($400).

(f) The penalty for failure to notify the board of a change of address within 30 days from an actual change in address shall be fixed by the board in an amount not to exceed fifty dollars ($50).

(g) The delinquency fee shall be 50 percent of the renewal fee for the certificate in effect on the date of the renewal of the certificate, but not less than fifty dollars ($50) nor more than two hundred dollars ($200).

(h) The fee for a branch office shall be fixed by the board in an amount not to exceed fifty dollars ($50).

(i) The fee for filing an application for approval of a school pursuant to Section 5650 shall be set by the board at an amount not to exceed the cost of the approval process or six hundred dollars ($600) charged and collected on a biennial basis, whichever is less.

SEC. 5. Section 6009.3 of the Business and Professions Code is amended to read:

6009.3. The Legislature finds and declares that it is important to inform taxpayers that they may make voluntary contributions to certain funds or programs, as provided on the state income tax return. The Legislature further finds and declares that many taxpayers remain unaware of the voluntary contribution check-offs on the state income tax return. Therefore, it is the intent of the Legislature to encourage all persons who prepare state income tax returns, including attorneys, to inform their clients in writing, prior to the completion of any state income tax return, that they may make a contribution to any voluntary contribution check-off on the state income tax return if they so choose.

SEC. 6. Section 7507.10 of the Business and Professions Code is amended to read:

7507.10. Each licensee shall serve a debtor with a notice of seizure as soon as possible after the recovery of collateral and not later than 48 hours, except that if the 48-hour period encompasses a Saturday, Sunday, or postal holiday, the notice of seizure shall be provided not later than 72 hours or, if the 48-hour period encompasses a Saturday or Sunday and a postal holiday, the notice of seizure shall be provided not later than 96 hours, after the repossession of collateral. The notice shall include all of the following:

(a) The name, address, and telephone number of the representative of the legal owner to be contacted regarding the repossession.

(b) The name, address, and telephone number of the representative of the repossession agency to be contacted regarding the repossession.

(c) A statement printed on the notice containing the following: "Repossessors are regulated by the Bureau of Security and Investigative Services, Department of Consumer Affairs, Sacramento, CA 95814. Repossessors are required to provide you, not later than 48 hours after the recovery of collateral, with an inventory of personal effects or other personal property recovered during repossession unless the 48-hour period encompasses a Saturday, Sunday, or a postal holiday, then the inventory shall be provided no later than 96 hours after the recovery of collateral."

(d) A disclosure that "Damage to a vehicle during or subsequent to a repossession and only while the vehicle is in possession of the repossession agency and which is caused by the repossession agency is the liability of the repossession agency. A mechanical or tire failure shall not be the responsibility of the repossession agency unless the failure is due to the negligence of the repossession agency."

(e) If applicable, a disclosure that "Environmental, Olympic, special interest, or other license plates issued pursuant to Article 8 (commencing with Section 5000), Article 8.4 (commencing with Section 5060) or Article 8.5 (commencing with Section 5100) of Chapter 1 of Division 3 of the Vehicle Code that remain the personal effects of the debtor will be removed from the collateral and inventoried, and that if the plates are not claimed by the debtor within 60 days, they will be destroyed."

The notice may be given by regular mail addressed to the last known address of the debtor or by personal service at the option of the repossession agency.

SEC. 7. Section 10085.5 of the Business and Professions Code is amended to read:

10085.5. (a) It shall be unlawful for any person to claim, demand, charge, receive, collect, or contract for an advance fee (1) for soliciting lenders on behalf of borrowers or performing services for borrowers in connection with loans to be secured directly or collaterally by a lien on real property, before the borrower becomes obligated to complete the loan or, (2) for performing any other activities for which a license is required, unless the person is a licensed real estate broker and has complied with the provisions of this part.

(b) This section does not prohibit the acceptance or receipt of an advance fee by any bank, savings association, credit union, industrial loan company, or person acting within the scope of a license issued to that person pursuant to Division 9 (commencing with Section 22000) of the Financial Code, in connection with loans to be secured

directly or collaterally by a lien on real property. This section does not apply to charges made by title insurers and controlled escrow companies pursuant to Chapter 1 (commencing with Section 12340) of Part 6 of Division 2 of the Insurance Code.

(c) A violation of this section is a public offense punishable by a fine not exceeding ten thousand dollars ($10,000), by imprisonment in the county jail for a term not to exceed six months, or by both that fine and imprisonment, or if by a corporation, the violation is punishable by a fine not exceeding fifty thousand dollars ($50,000).

SEC. 8. Section 10133.1 of the Business and Professions Code is amended to read:

10133.1. (a) Subdivisions (d) and (e) of Section 10131, Section 10131.1, Article 5 (commencing with Section 10230), and Article 7 (commencing with Section 10240) of this code and Section 1695.13 of the Civil Code do not apply to any of the following:

(1) Any person or employee thereof doing business under any law of this state, any other state, or the United States relating to banks, trust companies, savings and loan associations, industrial loan companies, pension trusts, credit unions, or insurance companies.

(2) Any nonprofit cooperative association organized under Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code, in loaning or advancing money in connection with any activity mentioned therein.

(3) Any corporation, association, syndicate, joint stock company, or partnership engaged exclusively in the business of marketing agricultural, horticultural, viticultural, dairy, livestock, poultry, or bee products on a cooperative nonprofit basis, in loaning or advancing money to the members thereof or in connection with any business of that type.

(4) Any corporation securing money or credit from any federal intermediate credit bank organized and existing pursuant to the provisions of an act of Congress entitled the "Agricultural Credits Act of 1923," in loaning or advancing money or credit so secured.

(5) Any person licensed to practice law in this state, not actively and principally engaged in the business of negotiating loans secured by real property, when that person renders services in the course of his or her practice as an attorney at law, and the disbursements of that person, whether paid by the borrower or other person, are not charges or costs and expenses regulated by or subject to the limitations of Article 7 (commencing with Section 10240), and the fees and disbursements are not shared, directly or indirectly, with the person negotiating the loan or the lender.

(6) Any person licensed as a finance lender when acting under the authority of that license.

(7) Any cemetery authority as defined by Section 7018 of the Health and Safety Code, that is authorized to do business in this state or its authorized agent.

(8) Any person authorized in writing by a savings institution to act as an agent of that institution, as authorized by Section 6520 of the Financial Code or comparable authority of the Federal Home Loan Bank Board by its regulations, when acting under the authority of that written authorization.

(9) Any person who is licensed as a securities broker or securities dealer under any law of this state, or of the United States, or any employee, officer, or agent of that person, if that person, employee, officer, or agent is acting within the scope of authority granted by that license in connection with a transaction involving the offer, sale, purchase, or exchange of a security representing an ownership interest in a pool of promissory notes secured directly or indirectly by liens on real property, which transaction is subject to any law of this state or the United States regulating the offer or sale of securities.

(10) Any person licensed as a residential mortgage lender or servicer when acting under the authority of that license.

(b) Persons described in paragraph (1), (2), or (3), as follows, are exempt from the provisions of subdivisions (d) and (e) of Section 10131 or Section 10131.1 with respect to the collection of payments or performance of services for lenders or on notes of owners in connection with loans secured directly or collaterally by liens on real property:

(1) The person makes collections on 10 or less of those loans, or in amounts of forty thousand dollars ($40,000) or less, in any calendar year.

(2) The person is a corporation licensed as an escrow agent under Division 6 (commencing with Section 17000) of the Financial Code and the payments are deposited and maintained in the escrow agent's trust account.

(3) An employee of a real estate broker who is acting as the agent of a person described in paragraph (4) of subdivision (b) of Section 10232.4.

For purposes of this subdivision, performance of services does not include soliciting borrowers, lenders, or purchasers for, or negotiating, loans secured directly or collaterally by a lien on real property.

SEC. 9. Section 10133.15 of the Business and Professions Code is amended to read:

10133.15. The provisions of Article 5 (commencing with Section 10230) and Article 7 (commencing with Section 10240) do not apply to any person whose business is that of acting as an authorized representative, agent, or loan correspondent of any person or employee thereof doing business under any law of this state, any other state, or the United States relating to banks, trust companies, savings and loan associations, industrial loan companies, pension trusts, credit unions, or insurance companies or when making loans qualified for sale to any of the foregoing insofar as that business is concerned.

SEC. 10. Section 10133.5 of the Business and Professions Code is amended to read:

10133.5. The provisions of Article 5 (commencing with Section 10230) do not apply to any person who is an approved lender, mortgagee, seller, or servicer for the Federal Housing Administration, United States Department of Veterans Affairs, Farmers Home Administration, Government National Mortgage Association, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, when making loans to be sold to, or when servicing loans on behalf of and subject to audit by, any of the foregoing with respect to those loans.

SEC. 11. Section 10145 of the Business and Professions Code is amended to read:

10145. (a) (1) A real estate broker who accepts funds belonging to others in connection with a transaction subject to this part shall deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, into a trust fund account maintained by the broker in a bank or recognized depository in this state. All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions from the person entitled to the funds.

(2) Notwithstanding the provisions of paragraph (1), a real estate broker collecting payments or performing services for investors or note owners in connection with loans secured by a first lien on real property may deposit funds received in trust in an out-of-state depository institution insured by the Federal Deposit Insurance Corporation, if the investor or note owner is any one of the following:

(A) The Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, or the United States Department of Veterans Affairs.

(B) A bank or subsidiary thereof, bank holding company or subsidiary thereof, trust company, savings bank or savings and loan association or subsidiary thereof, savings bank or savings association holding company or subsidiary thereof, credit union, industrial bank or industrial loan company, or insurance company doing business under the authority of, and in accordance with, the laws of this state, another state, or the United States relating to banks, trust companies, savings banks or savings associations, credit unions, industrial banks or industrial loan companies, or insurance companies, as evidenced by a license, certificate, or charter issued by the United States or a state, district, territory, or commonwealth of the United States.

(C) Trustees of a pension, profit-sharing, or welfare fund, if the pension, profit-sharing, or welfare fund has a net worth of not less than fifteen million dollars ($15,000,000).

(D) A corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or a wholly owned subsidiary of that corporation.

(E) A syndication or other combination of any of the entities specified in subparagraph (A), (B), (C), or (D) that is organized to purchase the promissory note.

(F) The California Housing Finance Agency or a local housing finance agency organized under the Health and Safety Code.

(G) A licensed residential mortgage lender or servicer acting under the authority of that license.

(H) A licensed real estate broker selling all or part of the loan, note, or contract to a lender or purchaser specified in subparagraphs (A) to (G), inclusive, of this subdivision.

(3) A real estate broker who deposits funds held in trust in an out-of-state depository institution in accordance with the provisions of paragraph (2) shall make available, in this state, the books, records, and files pertaining to the trust accounts to the commissioner or the commissioner's representatives, or pay the reasonable expenses for travel and lodging incurred by the commissioner or the commissioner's representatives in order to conduct an examination at an out-of-state location.

(b) A real estate broker acting as a principal pursuant to Section 10131.1 shall place all funds received from others for the purchase of real property sales contracts or promissory notes secured directly or collaterally by liens on real property in a neutral escrow depository unless delivery of the contract or note is made simultaneously with the receipt of the purchase funds.

(c) A real estate sales person who accepts trust funds from others on behalf of the broker under whom he or she is licensed shall immediately deliver the funds to the broker or, if so directed by the broker, shall deliver the funds into the custody of the broker's principal or a neutral escrow depository, or shall deposit the funds into the broker's trust fund account.

(d) If not otherwise expressly prohibited by this part, a real estate broker may, at the request of the owner of trust funds or of the principals to a transaction or series of transactions from whom the broker has received trust funds, deposit the funds into an interest-bearing account in a bank, savings and loan association, credit union, or industrial loan company the accounts of which are insured by the Federal Deposit Insurance Corporation, if all of the following requirements are met:

(1) The account is in the name of the broker as trustee for the designated beneficiary or principal of a transaction or series of transactions.

(2) All of the funds in the account are covered by insurance provided by an agency of the United States.

(3) The funds in the account are kept separate, distinct, and apart from funds belonging to the broker or to any other person for whom the broker holds funds in trust.

(4) The broker discloses to the person from whom the trust funds are received and to a beneficiary whose identity is known to the

broker at the time of establishing the account the nature of the account, how interest will be calculated and paid under various circumstances, whether service charges will be paid to the depository and by whom, and possible notice requirements or penalties for withdrawal of funds from the account.

(5) Interest earned on funds in the account may not inure directly or indirectly to the benefit of the broker or a person licensed to the broker.

(6) In an executory sale, lease, or loan transaction in which the broker accepts funds in trust to be applied to the purchase, lease, or loan, the parties to the contract shall have specified in the contract or by collateral written agreement the person to whom interest earned on the funds is to be paid or credited.

(e) The broker shall have no obligation to place trust funds into an interest-bearing account unless requested to do so and unless all of the conditions in subdivision (d) are met, nor, in any event, if he or she advises the party making the request that the funds will not be placed in an interest-bearing account.

(f) Nothing in subdivision (d) shall preclude the commissioner from prescribing, by regulation, circumstances in which, and conditions under which, a real estate broker is authorized to deposit funds received in trust into an interest-bearing trust fund account.

(g) The broker shall maintain a separate record of the receipt and disposition of all funds described in subdivisions (a) and (b), including any interest earned on the funds.

(h) Upon request of the commissioner, a broker shall furnish to the commissioner an authorization for examination of financial records of those trust fund accounts maintained in a financial institution, in accordance with the procedures set forth in Section 7473 of the Government Code.

(i) As used in this section "neutral escrow" means an escrow business conducted by a person licensed under Division 6 (commencing with Section 17000) of the Financial Code or by a person described in subdivision (a) or (c) of Section 17006 of that code.

SEC. 12. Section 10165 of the Business and Professions Code is amended to read:

10165. For a violation of any of the provisions of Section 10160, 10161.8, 10162, or 10163, the commissioner may temporarily suspend or permanently revoke the license of the real estate licensee in accordance with the provisions of this part relating to hearings.

SEC. 13. Section 10223 of the Business and Professions Code is repealed.

SEC. 14. Section 10231 of the Business and Professions Code is amended to read:

10231. Except as authorized by permit issued pursuant to applicable provisions of the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the

Corporations Code), no person, in doing any of the acts set forth in subdivision (d) or (e) of Section 10131 or in Section 10131.1, shall accept any purchase or loan funds or other consideration from a prospective purchaser or lender, or directly or indirectly cause those funds or other consideration to be deposited in an escrow, except as to a specific loan or a specific real property sales contract or promissory note secured directly or collaterally by a lien on real property (a) as to which loan, contract, or note the person has a bona fide authorization to negotiate or to sell, (b) where the loan, contract, or note has been bought and completely paid for by the person, or (c) where the person has an unconditional written contract which obligates the person to purchase the specific real property sales contract or promissory note secured directly or collaterally by a deed of trust.

SEC. 15. Section 10231.2 of the Business and Professions Code is amended to read:

10231.2. (a) A real estate broker who, through express or implied representations that the broker or any salesperson acting on the broker's behalf is engaging in acts for which a real estate license is required by subdivision (d) or (e) of Section 10131, proposes to solicit and accept funds, or to cause the solicitation and acceptance of funds, to be applied to a purchase or loan transaction in which the broker will directly or indirectly obtain the use or benefit of the funds other than for commissions, fees, and costs and expenses as provided by law for the broker's services as an agent, shall, prior to the making of any representation, solicitation, or presentation of the statement described in subdivision (b), submit the following to the Department of Real Estate:

(1) A true copy of the statement described in subdivision (b) complete except for the signature of the prospective lender or purchaser.

(2) A statement that the submittal is being made to the department pursuant to Section 10231.2.

(b) A broker making a solicitation pursuant to subdivision (a) shall deliver, or cause to be delivered, to the person solicited, the applicable completed statement described in Section 10232.5 not less than 24 hours before the earlier of the acceptance of any funds from that person by or on behalf of the broker or the execution of any instrument obligating the person to make the loan or purchase. The statement shall be signed by the prospective lender or purchaser and by the real estate broker or, on the broker's behalf, by a real estate salesperson licensed to the broker. When so executed, an exact copy of the executed statement shall be given to the prospective lender or purchaser, and the broker shall retain a true copy of the executed statement for a period of four years.

(c) None of the provisions of subdivision (a) or (b) shall apply in the case of an offering of a security authorized pursuant to applicable provisions of the Corporate Securities Law of 1968 (Division 1

(commencing with Section 25000 of Title 4 of the Corporations Code).

(d) In the case of a solicitation by a corporate real estate broker, the provisions of subdivisions (a) and (b) shall apply if the funds solicited are intended for the direct or indirect use or benefit of an officer or director of the corporation or of a person with a 10 percent or greater ownership interest in the corporation.

SEC. 16. Section 10232 of the Business and Professions Code is amended to read:

10232. (a) Except as otherwise expressly provided, Sections 10232.2 and 10232.25 are applicable to every real estate broker who intends or reasonably expects in a successive 12 months to do any of the following:

(1) Negotiate a combination of 10 or more of the following transactions pursuant to subdivision (d) or (e) of Section 10131 or Section 10131.1 in an aggregate amount of more than one million dollars ($1,000,000):

(A) Loans secured directly or collaterally by liens on real property or on business opportunities, as agent for another or others.

(B) Sales or exchanges of real property sales contracts or promissory notes secured directly or collaterally by liens on real property or on business opportunities, as agent for another or others.

(C) Sales or exchanges of real property sales contracts or promissory notes secured directly or collaterally by liens on real property, as the owner of those notes or contracts.

(2) Make collections of payments in an aggregate amount of two hundred fifty thousand dollars ($250,000) or more on behalf of owners of promissory notes secured directly or collaterally by liens on real property, owners of real property sales contracts, or both.

(3) Make collections of payments in an aggregate amount of two hundred fifty thousand dollars ($250,000) or more on behalf of obligors of promissory notes secured directly or collaterally by liens on real property, lenders of real property sales contracts, or both.

Persons under common management, direction, or control in conducting the activities enumerated above shall be considered as one person for the purpose of applying the above criteria.

(b) The negotiation of a combination of two or more new loans and sales or exchanges of existing promissory notes and real property sales contracts of an aggregate amount of more than two hundred fifty thousand dollars ($250,000) in any three successive months, or a combination of five or more new loans and sales or exchanges of existing promissory notes and real property sales contracts of an aggregate amount of more than five hundred thousand dollars ($500,000) in any successive six months, shall create a rebuttable presumption that the broker intends to negotiate new loans and sales and exchanges of an aggregate amount that will meet the criteria of subdivision (a).

(c) In determining the applicability of Sections 10232.2 and 10232.25, loans or sales negotiated by a broker, or for which a broker collects payments or provides other servicing for the owner of the note or contract, shall not be counted in determining whether the broker meets the criteria of subdivisions (a) and (b) if any of the following apply:

(1) The lender or purchaser is any of the following:

(A) The Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, or the United States Department of Veterans Affairs.

(B) A bank or subsidiary thereof, bank holding company or subsidiary thereof, trust company, savings bank or savings and loan association or subsidiary thereof, savings bank or savings association holding company or subsidiary thereof, credit union, industrial bank or industrial loan company, finance lender, or insurer doing business under the authority of, and in accordance with, the laws of this state, any other state, or the United States relating to banks, trust companies, savings banks or savings associations, credit unions, industrial banks or industrial loan companies, finance lenders, or insurers, as evidenced by a license, certificate, or charter issued by the United States or a state, district, territory, or commonwealth of the United States.

(C) Trustees of a pension, profit-sharing, or welfare fund, if the pension, profit-sharing, or welfare fund has a net worth of not less than fifteen million dollars ($15,000,000).

(D) A corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or a wholly owned subsidiary of that corporation.

(E) A syndication or other combination of any of the entities specified in subparagraph (A), (B), (C), or (D) that is organized to purchase the promissory note.

(F) The California Housing Finance Agency or a local housing finance agency organized under the Health and Safety Code.

(G) A licensed residential mortgage lender or servicer acting under the authority of that license.

(H) An institutional investor that issues mortgage-backed securities, as specified in paragraph (11) of subdivision (i) of Section 50003 of the Financial Code.

(I) A licensed real estate broker selling all or part of the loan, the note, or the contract to a lender or purchaser specified in subparagraphs (A) to (H), inclusive, of this subdivision.

(2) The loan or sale is negotiated, or the loan or contract is being serviced for the owner, under authority of a permit issued pursuant to applicable provisions of the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code).

(3) The transaction is subject to the requirements of Article 3 (commencing with Section 2956) of Chapter 2 of Title 14 of Part 4 of the Civil Code.

(d) If two or more real estate brokers who are not under common management, direction, or control, cooperate in the negotiation of a loan or the sale or exchange of a promissory note or real property sales contract and share in the compensation for their services, the dollar amount of the transaction shall be allocated according to the ratio that the compensation received by each broker bears to the total compensation received by all brokers for their services in negotiating the loan or sale or exchange.

(e) A real estate broker who meets any of the criteria of subdivision (a) or (b) shall notify the department in writing within 30 days after that determination is made.

SEC. 17. Section 10232.1 of the Business and Professions Code is amended to read:

10232.1. (a) A real estate broker, prior to the use of any proposed advertisement in connection with the conduct of activities described in subdivisions (d) and (e) of Section 10131 and Section 10131.1, may submit a true copy thereof to the Department of Real Estate for approval. The submission shall be accompanied by a fee of not more than forty dollars ($40). The commissioner shall by regulation prescribe the amount of the fee. If disapproval of the proposed advertisement is not communicated by the department to the broker within 15 calendar days after receipt of the copy of the proposed advertisement by the department, the proposed advertisement shall be deemed approved, but the department shall not be precluded from disapproving a later publication or other use of the same or similar advertising.

The commissioner shall adopt regulations pertaining to the submittal and clearance of that advertising and establishing criteria for approval to ensure that the public will be protected against false or misleading representations.

Except as provided in subdivision (b), "advertisement" includes dissemination in any newspaper, circular, form letter, brochure or similar publication, display, sign, radio broadcast or telecast, which concerns (1) the use, terms, rates, conditions, or the amount of any loan or sale referred to in subdivisions (d) and (e) of Section 10131 or Section 10131.1 or (2) the security, solvency, or stability of any person carrying on the activities described in those sections.

(b) "Advertisement" does not include a letter or brochure that meets both of the following criteria:

(1) It is restricted in distribution to other real estate brokers and to persons for whom the broker has previously acted as an agent in arranging a loan secured by real property or in the purchase, sale, or exchange of a deed of trust or real property sales contract.

(2) It is restricted in content to the identification and a description of the terms of loans, mortgages, deeds of trust, real property sales

contracts, or any combination thereof offered for funding or purchase through the broker as agent.

(c) Subdivision (a) is not applicable to advertising that is used exclusively in connection with an offering authorized by permit issued pursuant to the applicable provisions of the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000 of Title 4 of the Corporations Code).

(d) All advertising approvals shall be for a period of five years after the date of approval. The approval period applies to all advertising, including that which was previously submitted on a mandatory basis.

SEC. 18. Section 10232.4 of the Business and Professions Code is amended to read:

10232.4. (a) In making a solicitation to a particular person and in negotiating with that person to make a loan secured by real property or to purchase a real property sales contract or a note secured by a deed of trust, a real estate broker shall deliver to the person solicited the applicable completed statement described in Section 10232.5 as early as practicable before he or she becomes obligated to make the loan or purchase and, except as provided in subdivision (c), before the receipt by or on behalf of the broker of any funds from that person. The statement shall be signed by the prospective lender or purchaser and by the real estate broker, or by a real estate salesperson licensed to the broker, on the broker's behalf. When so executed, an exact copy shall be given to the prospective lender or purchaser, and the broker shall retain a true copy of the executed statement for a period of three years.

(b) The requirement of delivery of a disclosure statement pursuant to subdivision (a) shall not apply with respect to the following persons:

(1) The prospective purchaser of a security offered under authority of a permit issued pursuant to applicable provisions of the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code) which requires that each prospective purchaser of a security be given a prospectus or other form of disclosure statement approved by the department issuing the permit.

(2) The seller of real property who agrees to take back a promissory note of the purchaser as a method of financing all or a part of the purchase of the property.

(3) The prospective purchaser of a security offered pursuant to, and in accordance with, a regulation duly adopted by the Commissioner of Corporations granting an exemption from qualification under the Corporate Securities Law of 1968 for the offering if one of the conditions of the exemption is that each prospective purchaser of the security be given a disclosure statement prescribed by the regulation before the prospective purchaser becomes obligated to purchase the security.

(4) A prospective lender or purchaser, if that lender or purchaser is any of the following:

(A) The United States or any state, district, territory, or commonwealth thereof, or any city, county, city and county, public district, public authority, public corporation, public entity, or political subdivision of a state, district, territory, or commonwealth of the United States, or any agency or corporate or other instrumentality of any one or more of the foregoing, including the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, and the United States Department of Veterans Affairs.

(B) Any bank or subsidiary thereof, bank holding company or subsidiary thereof, trust company, savings bank or savings and loan association or subsidiary thereof, savings bank or savings association holding company or subsidiary thereof, credit union, industrial bank or industrial loan company, personal property broker, commercial finance lender, consumer finance lender, or insurance company doing business under the authority of, and in accordance with, the laws of this state, any other state, or the United States relating to banks, trust companies, savings banks or savings associations, credit unions, industrial banks or industrial loan companies, finance lenders, or insurance companies, as evidenced by a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States.

(C) Trustees of pension, profit-sharing, or welfare fund, if the pension, profit-sharing, or welfare fund has a net worth of not less than fifteen million dollars ($15,000,000).

(D) Any corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or any wholly owned subsidiary of that corporation.

(E) Any syndication or other combination of any of the entities specified in subparagraph (A), (B), (C), or (D) that is organized to purchase the promissory note.

(F) A licensed real estate broker engaging in the business of selling all or part of the loan, note, or contract to a lender or purchaser to whom no disclosure is required pursuant to this subdivision.

(G) A licensed residential mortgage lender or servicer when acting under the authority of that license.

(c) When the broker has custody of funds of a prospective lender or purchaser which were received and are being maintained with the express permission of the owner and in accordance with law, and the broker retains the funds in an escrow depository or a trust fund account pending receipt of the owner's express written instructions to disburse the funds for a loan or purchase, the broker shall cause the disclosure statement to be delivered to the owner and shall obtain the owner's written consent to the proposed disbursement before making the disbursement. Unless the broker has a written agreement

with the owner as provided in Section 10231.1, the broker shall transmit to the owner not later than 60 days after receipt, all funds then in the broker's custody for which the owner has not given written instructions authorizing disbursement.

SEC. 19. Section 10236 of the Business and Professions Code is amended to read:

10236. The commissioner in his or her discretion may honor requests from interested persons for interpretive opinions with respect to any provision of this article or with respect to any regulation for implementation of provisions of this article.

No provision of this article imposing any liability applies in the case of an act done or omitted in good faith in conformity with a written interpretive opinion of the commissioner or an opinion of the Attorney General, notwithstanding that the opinion may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

SEC. 20. Section 10236.2 of the Business and Professions Code is amended to read:

10236.2. (a) A real estate broker who satisfies the criteria of subdivision (a) or (b) of Section 10232 and who fails to notify the Department of Real Estate, in writing, of that fact within 30 days thereafter as required by subdivision (e) of Section 10232 shall be assessed a penalty of fifty dollars ($50) per day for each additional day written notification has not been received up to and including the 30th day after the first day of the assessment penalty. On and after the 31st day the penalty is one hundred dollars ($100) per day, not to exceed a total penalty of ten thousand dollars ($10,000), regardless of the number of days, until the department receives the written notification.

(b) The commissioner may suspend or revoke the license of any real estate broker who fails to pay a penalty imposed under this section. In addition, the commissioner may bring an action in an appropriate court of this state to collect payment of the penalty.

(c) All penalties paid or collected under this section shall be deposited into the Recovery Account of the Real Estate Fund.

SEC. 21. Section 11000.1 of the Business and Professions Code is amended to read:

11000.1. (a) "Subdivided lands" and "subdivision," as defined by Sections 11000 and 11004.5, also include improved or unimproved land or lands, a lot or lots, or a parcel or parcels, of any size, in which, for the purpose of sale or lease or financing, whether immediate or future, five or more undivided interests are created or are proposed to be created.

(b) This section does not apply to the creation or proposed creation of undivided interests in land if any one of the following conditions exists:

(1) The undivided interests are held or to be held by persons related one to the other by blood or marriage.

(2) The undivided interests are to be purchased and owned solely by persons who present evidence satisfactory to the Real Estate Commissioner that they are knowledgeable and experienced investors who comprehend the nature and extent of the risks involved in the ownership of these interests. The Real Estate Commissioner shall grant an exemption from this part if the undivided interests are to be purchased by no more than 10 persons, each of whom furnishes a signed statement to the commissioner that he or she (A) is fully informed concerning the real property to be acquired and his or her interest therein including the risks involved in ownership of undivided interests, (B) is purchasing the interest or interests for his or her own account and with no present intention to resell or otherwise dispose of the interest for value, and (C) expressly waives the protections afforded to a purchaser by this part.

(3) The undivided interests are created as the result of a foreclosure sale.

(4) The undivided interests are created by a valid order or decree of a court.

(5) The offering and sale of the undivided interests have been expressly qualified by the issuance of a permit from the Commissioner of Corporations pursuant to the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code).

(6) The real property is offered for sale as a time-share project as defined in Section 11003.5.

SEC. 22. Section 11010.2 of the Business and Professions Code is amended to read:

11010.2. (a) As used in this section:

(1) "Quantitative" means the number and type of documents required to make the filing substantially complete, as defined in the regulations of the commissioner, without regard to the content of those requirements.

(2) "Qualitatively complete" means that all deficiencies and substantive inadequacies contained in the documents that were required to make the filing substantially complete have been corrected.

(3) "Substantially complete" means that a notice and application contain all requirements as set forth in the regulations of the commissioner.

(b) Upon receipt of a notice of intention pursuant to Section 11010 and an application for issuance of a public report, the commissioner shall review the notice and application to determine if the notice and application are substantially complete, with respect to quantitative requirements. The commissioner shall notify the applicant in writing of that determination within 10 days of receipt of the notice and application.

(1) If the notice and application are not substantially complete with respect to the quantitative requirements pursuant to this

subdivision, the notification shall specify the information needed to make the notice and application substantially complete. Upon receipt of any resubmittal of a notice and application, the commissioner shall notify the applicant in writing of that determination within 10 days of receipt of the notice and application.

(2) If the commissioner determines that the notice and application are substantially complete with respect to the quantitative requirements pursuant to this subdivision, the commissioner shall provide the applicant with a list of all deficiencies and substantive inadequacies necessary for the notice and application to be qualitatively complete, within 60 days of that determination in the case of subdivisions specified in Section 11000.1 or 11004.5, and within 20 days of that determination in the case of other subdivisions.

(c) Upon receipt of all documents, materials, writings, and other information submitted in response to the list in paragraph (2) of subdivision (b), the commissioner shall notify the applicant whether the notice and application are qualitatively complete, within 30 days in the case of subdivisions specified in Section 11000.1 or 11004.5, and within 20 days of receipt in the case of other subdivisions. If the application and notice are not qualitatively complete, the notification shall include a list of any remaining deficiencies and substantive inadequacies. Upon receipt of any resubmittal of documents, materials, writings, and other information in response to a list of any remaining deficiencies and substantive inadequacies, the commissioner shall provide notification within the time limits specified in this subdivision.

(d) The commissioner shall issue a public report within 15 days in the case of a subdivision specified in Section 11000.1 or 11004.5, or within 10 days in the case of other subdivisions, after the notice and application are determined to be qualitatively and substantially complete, and submittal of recorded or filed instruments and evidence of financial arrangements required by the commissioner.

(e) The commissioner shall adopt regulations, in accordance with Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code, which define "substantially complete" and which list all the requirements necessary for a notice of intention and application to be considered "substantially complete."

(f) The commissioner may adopt emergency regulations, in accordance with Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code, to, as set forth below, increase those time periods specified in subdivisions (b), (c), and (d), upon a showing that the number of notices of intention and applications for a subdivision public report filed with the department for any immediately preceding six-month period has increased by more than 15 percent over the monthly average number of notices and applications filed for the base period commencing July 1, 1983, and ending June 30, 1986:

(1) The time for issuing the notice provided in subdivision (b) shall increase to 15 days.

(2) The time for providing the listing required by paragraph (2) of subdivision (b) shall increase to 90 days in the case of subdivisions specified in Sections 11000.1 and 11004.5 and to 30 days for other subdivisions.

(3) The time period provided in subdivision (c) for responding to receipt of documents intended to correct deficiencies shall be 30 days without regard to the type of subdivision being processed.

(4) The time periods provided in subdivision (d) within which the commissioner is required to issue a public report, in the case of subdivisions specified in Sections 11000.1 and 11004.5 shall increase to 30 days, and in the case of other subdivisions shall increase to 15 days.

This section does not apply to filings made exclusively under Section 11010.1. Nothing in this section requires the commissioner to issue a public report where grounds for denial exist. However, issuance of a public report shall not be denied for inadequate information if the cause thereof is the commissioner's failure to comply with this section.

Notwithstanding other provisions of this section, the commissioner shall not be required to issue a public report if grounds for denial exist under Section 11018 or 11018.5. However, the commissioner may not base the denial of a public report on the lack of adequate information if the commissioner has not acted within the time periods prescribed in this section.

SEC. 23. Section 11010.4 of the Business and Professions Code is amended to read:

11010.4. The notice of intention specified in Section 11010 is not required for a proposed offering of subdivided land that satisfies all of the following criteria:

(a) The owner, subdivider, or agent has complied with Sections 11013.1, 11013.2, and 11013.4, if applicable.

(b) The subdivided land is not a subdivision as defined in Section 11000.1 or 11004.5.

(c) Each lot, parcel, or unit of the subdivision is located entirely within the boundaries of a city.

(d) Each lot, parcel, or unit of the subdivision will be sold or offered for sale improved with a completed residential structure and with all other improvements completed that are necessary to occupancy or with financial arrangements determined to be adequate by the city to ensure completion of those improvements.

SEC. 24. Section 11018.3 of the Business and Professions Code is amended to read:

11018.3. Any subdivider objecting to the denial of a public report may, within 30 days after receipt of the order of denial, file a written request for a hearing. The commissioner shall hold the hearing within 20 days thereafter unless the party requesting the hearing has

requested a postponement. If the hearing is not held within 20 days after the request for a hearing is received plus the period of that postponement or if a proposed decision is not rendered within 45 days after submission and an order adopting or rejecting the proposed decision is not issued within 15 days thereafter, the order of denial shall be rescinded and a public report issued.

SEC. 25. Section 11018.12 of the Business and Professions Code is amended to read:

11018.12. (a) The commissioner may issue a conditional public report for a subdivision specified in Section 11004.5 if the requirements of subdivision (e) are met, all deficiencies and substantive inadequacies in the documents that are required to make an application for a final public report for the subdivision substantially complete have been corrected, the material elements of the setup of the offering to be made under the authority of the conditional public report have been established, and all requirements for issuance of a public report set forth in the regulations of the commissioner have been satisfied except for one or more of the following requirements, as applicable:

(1) A final map has not been recorded.

(2) A condominium plan pursuant to subdivision (e) of Section 1351 of the Civil Code has not been recorded.

(3) A declaration of covenants, conditions, and restrictions pursuant to Section 1353 of the Civil Code has not been recorded.

(4) A declaration of annexation has not been recorded.

(5) A recorded subordination of existing liens to the declaration of covenants, conditions, and restrictions or declaration of annexation or escrow instructions to effect recordation prior to the first sale are lacking.

(6) Filed articles of incorporation are lacking.

(7) A current preliminary report of a licensed title insurance company issued after filing of the final map and recording of the declaration covering all subdivision interests to be included in the public report has not been provided.

(8) Other requirements the commissioner determines are likely to be timely satisfied by the applicant, notwithstanding the fact that the failure to meet these requirements makes the application qualitatively incomplete.

(b) The commissioner may issue a conditional public report for a subdivision not referred to or specified in Section 11000.1 or 11004.5 if the requirements of subdivision (e) are met, all deficiencies and substantive inadequacies in the documents that are required to make an application for a final public report for the subdivision substantially complete have been corrected, the material elements of the setup of the offering to be made under the authority of the conditional public report have been established, and all requirements for issuance of a public report set forth in the

regulations of the commissioner have been satisfied except for one or more of the following requirements, as applicable:

(1) A final map has not been recorded.

(2) A declaration of covenants, conditions, and restrictions has not been recorded.

(3) A current preliminary report of a licensed title insurance company issued after filing of the final map and recording of the declaration covering all subdivision interests to be included in the public report has not been provided.

(4) Other requirements the commissioner determines are likely to be timely satisfied by the applicant, notwithstanding the fact that the failure to meet these requirements makes the application qualitatively incomplete.

(c) A decision by the commissioner to not issue a conditional public report shall be noticed in writing to the applicant within five business days and that notice shall specifically state the reasons why the report is not being issued.

(d) Notwithstanding the provisions of Section 11018.2, a person may sell or lease, or offer for sale or lease, lots or parcels in a subdivision pursuant to a conditional public report if, as a condition of the sale or lease or offer for sale or lease, delivery of legal title or other interest contracted for will not take place until issuance of a public report and provided that the requirements of subdivision (e) are met.

(e) (1) Evidence shall be supplied that all purchase money will be deposited in compliance with subdivision (a) of Section 11013.2 or subdivision (a) of Section 11013.4, and in the case of a subdivision referred to in subdivision (a) evidence is given of compliance with paragraphs (1) and (2) of subdivision (a) of Section 11018.5.

(2) A description of the nature of the transaction shall be supplied.

(3) Provision shall be made for the return of the entire sum of money paid or advanced by the purchaser if a subdivision public report has not been issued within six months of the date of issuance of the conditional public report or the purchaser is dissatisfied with the public report because of a change pursuant to Section 11012.

(f) A subdivider, principal, or his or her agent shall provide a prospective purchaser a copy of the conditional public report and a written statement including all of the following:

(1) Specification of the information required for issuance of a public report.

(2) Specification of the information required in the public report that is not available in the conditional public report, along with a statement of the reasons why that information is not available at the time of issuance of the conditional public report.

(3) A statement that no person acting as a principal or agent shall sell, lease, or offer for sale or lease lots or parcels in a subdivision for which a conditional public report has been issued, except as provided in this article.

(4) Specification of the requirements of subdivision (e).

(g) The prospective purchaser shall sign a receipt that he or she has received and has read the conditional public report and the written statement provided pursuant to subdivision (f).

(h) The term of a conditional public report shall not exceed six months, and may be renewed for one additional term of six months if the commissioner determines that the requirements for issuance of a public report are likely to be satisfied during the renewal term.

SEC. 26. Section 17505.2 of the Business and Professions Code is amended 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) in connection with his or her services, name, or place of business, 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 or by 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 by 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. 27. Section 17538 of the Business and Professions Code is amended to read:

17538. (a) It is unlawful in the sale or lease or offering for sale or lease of goods or services, for any person conducting sales or leases by telephone, the Internet or other electronic means of communication, mail order, or catalog in this state, including, but not limited to, the offering for sale or lease on television, radio, or the Internet, or by any other electronic means of communication or telecommunications device, of goods or services that may be ordered by mail, telephone, the Internet, or other electronic means of communication or telecommunications device, or for any person advertising in connection with those sales, leases, or advertisements a mailing address, telephone number, or Internet or other electronic address, to accept payment from or for a buyer, for the purchase or lease of goods or services ordered by mail, telephone, the Internet, or other electronic means of communication or telecommunications device, whether payment to the vendor is made directly, through the mail, by means of a transfer of funds from an account of the buyer or any other person, or by any other means, and then permit 30 days, unless otherwise conspicuously stated in the offering or advertisement, or unless a shorter time is clearly communicated by the person conducting the sale or lease, to elapse without doing any one of the following things:

(1) Shipping, mailing, or providing the goods or services ordered.

(2) Mailing a full refund or, if payment was made by means of a transfer from an account, (A) crediting the account in the full amount of the debit, or (B) if a third party is the creditor, issuing a credit memorandum to the third party, who shall promptly credit the account in the full amount of the debit.

(3) Sending the buyer a letter or other written notice (A) advising the buyer of the duration of an expected delay expressed as a specific number of days or weeks, or proposing the substitution of goods or services of equivalent or superior quality, and (B) offering to make a full refund, in accordance with paragraph (2), within one week if the buyer so requests. The vendor shall provide to the buyer in that letter or written notice a toll-free telephone number or other cost-free method to communicate the buyer's request for a full refund. If the vendor proposes to substitute goods or services, the vendor shall describe the substitute goods or services in detail,

indicating fully how the substitute differs from the goods or services ordered.

(4) (A) Shipping, mailing, or providing substitute goods or services of equivalent or superior quality, if the buyer is extended the opportunity to return the substitute goods or services and the vendor promises to refund to the buyer (i) the cost of returning the substitute goods or services and (ii) any portion of the purchase price previously paid by the buyer.

(B) Except as provided in subparagraph (C), a notice to the buyer shall accompany the mailing, shipping, or providing of the substitute goods or services that informs the buyer of the substitution; describes fully how the substitute differs from the goods or services ordered, except that obvious nontechnical differences, such as color, need not be described; and discloses the buyer's right to reject the substitute goods or services and obtain a full refund of the amount paid, plus the cost of returning the substitute goods or services.

(C) The vendor may omit from the notice required by subparagraph (B) a description of how the substitute goods or services differ from the ordered goods or services if the notice otherwise complies with subparagraph (B), and if all the following requirements are complied with:

(i) The vendor maintains at least 100 retail outlets located in at least 20 counties in this state that are open to the public regularly during normal business hours where buyers can order catalog goods, pick them up, and return them for refunds.

(ii) The vendor maintains a toll-free telephone number and provides to each buyer, at the time of the buyer's call, a full description of how substitute goods or services differ from ordered goods or services. The toll-free telephone number shall operate and be staffed at all times during which goods or services normally are available for pick up from the vendor's retail outlets.

(iii) If the buyer picks up substitute goods or services from the vendor's retail outlet, the notice required by subparagraph (B) as modified by this subparagraph is placed on, or attached to, the exterior of the package or wrapping containing the substitute, or is handed to the buyer at the time the buyer picks up the substitute.

(iv) The notice contains a reference number or some other means of identifying the ordered goods or services and the substitute goods or services.

(v) The notice contains the vendor's toll-free telephone number and instructions to the buyer that the buyer may call that number to obtain a full description of how the substitute differs from the ordered goods.

(b) For purposes of paragraphs (3) and (4) of subdivision (a), goods or services shall be considered of "equivalent or superior quality" only if they are (1) substantially similar to the goods or services ordered, (2) fit for the usual purposes for which the goods or services ordered are used, and (3) normally offered by the vendor

at a price equal to or greater than the price of the goods or services ordered.

(c) When a buyer makes an initial application for an open-end credit plan, as defined in the Federal Consumer Credit Protection Act (15 U.S.C. Sec. 1602), at the same time the goods or services are ordered, and the goods or services are to be purchased on credit, the person conducting the business shall have 50 days, rather than 30 days, to perform the actions specified in this section.

(d) A vendor conducting business through the Internet or any other electronic means of communication shall do all of the following when the transaction involves a buyer located in this state:

(1) Before accepting any payment or processing any debit or credit charge or funds transfer, the vendor shall disclose to the buyer in writing or by electronic means of communication, such as E-mail or an on-screen notice, the vendor's return and refund policy, the legal name under which the business is conducted and, except as provided in paragraph (3), the complete street address from which the business is actually conducted.

(2) If the disclosure of the vendor's legal name and address information required by this subdivision is made by on-screen notice, all of the following shall apply:

(A) The disclosure of the legal name and address information shall appear on any of the following: (i) the first screen displayed when the vendor's electronic site is accessed, (ii) on the screen on which goods or services are first offered, (iii) on the screen on which a buyer may place the order for goods or services, or (iv) on the screen on which the buyer may enter payment information, such as a credit card account number. The communication of that disclosure shall not be structured to be smaller or less legible than the text of the offer of the goods or services.

(B) The disclosure of the legal name and address information shall be accompanied by an adjacent statement describing how the buyer may receive the information at the buyer's E-mail address. The vendor shall provide the disclosure information to the buyer at the buyer's E-mail address within five days of receiving the buyer's request.

(C) Until the vendor complies with subdivision (a) in connection with all buyers of the vendor's goods or services, the vendor shall make available to a buyer and any person or entity who may enforce this section pursuant to Section 17535 on-screen access to the information required to be disclosed under this subdivision.

(3) The complete street address need not be disclosed as required by paragraph (1) if the vendor utilizes a private mailbox receiving service and all of the following conditions are met: (A) the vendor satisfies the conditions described in paragraph (2) of subdivision (b) of Section 17538.5, (B) the vendor discloses the actual street address of the private mailbox receiving service in the manner prescribed by this subdivision for the disclosure of the vendor's actual street

address, and (C) the vendor and the private mailbox receiving service comply with all of the requirements of subdivisions (c) to (f), inclusive, of Section 17538.5.

(e) As used in this section and Section 17538.3, the following words have the following meanings:

(1) "Goods" means tangible chattels, including certificates or coupons exchangeable for those goods, and including goods which, at the time of the sale or subsequently, are to be so affixed to real property as to become a part of that real property, whether or not severable therefrom.

(2) "Person" means an individual, partnership, corporation, association, or other group, however organized.

(3) "Buyer" means a person who seeks or acquires, by purchase or lease, any goods or services for any purpose.

(4) "Services" means work, labor, and services, including services furnished in connection with the sale or repair of goods.

(5) "Vendor" means a person who, as described in subdivision (a), vends, sells, leases, supplies, or ships goods or services, who conducts sales or leases of goods or services, or who offers goods or services for sale or lease. "Vendor" does not include a person responding to an electronic agent in connection with providing goods or services to a buyer if the aggregate amount of all transactions with the buyer does not exceed ten dollars ($10).

(6) "Internet" means the global information system that is logically linked together by a globally unique address space based on the Internet Protocol (IP), or its subsequent extensions, and that is able to support communications using the Transmission Control Protocol/Internet Protocol (TCP/IP) suite, or its subsequent extensions, or other IP-compatible protocols, and that provides, uses, or makes accessible, either publicly or privately, high level services layered on the communications and related infrastructure described in this paragraph.

(7) "Electronic agent" means a computer program designed, selected, or programmed to initiate or respond to electronic messages or performances without review by an individual.

(f) Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

SEC. 28. Section 17762 of the Business and Professions Code is amended to read:

17762. Any trading stamp company shall redeem upon presentation any trading stamp that it has issued, either in merchandise, service, or cash, at the option of the rightful holder. However, if the trading stamp company only offers to redeem the trading stamp in cash, the rightful holder of the trading stamp shall not have the option of receiving merchandise or service and shall only receive a cash redemption. Trading stamps shall only be

presented for redemption in cash in an amount aggregating not less than one dollar ($1).

SEC. 29. Section 19556 of the Business and Professions Code is amended to read:

19556. (a) The distribution shall be made by the distributing agent to beneficiaries qualified under this article. For the purposes of this article, a beneficiary shall be all of the following:

(1) A nonprofit corporation or organization entitled by law to receive a distribution made by a distributing agent.

(2) Exempt or entitled to an exemption from the same taxes measured by income imposed by this state and the United States as those under which the distributing agent is exempt or entitled to an exemption.

(3) Engaged in charitable, benevolent, civic, religious, educational, or veterans' work similar to that of agencies recognized by an organized community chest in the State of California, except that the funds so distributed may be used by the beneficiary for capital expenditures.

(4) Approved by the board.

(b) At least 20 percent of the distribution shall be made to charities associated with the horseracing industry. No beneficiary otherwise qualified under this section to receive charity day net proceeds shall be excluded on the basis that the beneficiary provides charitable benefits to persons connected with the care, training, and running of racehorses, except that type of beneficiary shall make an accounting to the board within one calendar year of the date of receipt of any distribution.

SEC. 30. Section 19846A of the Business and Professions Code is amended to read:

19846A. (a) Every person who, by statute or regulation, is required to hold a state license shall obtain the license prior to engaging in the activity or occupying the position with respect to which the license is required. Every person who, by order of the commission, is required to apply for a gambling license or a finding of suitability shall file the application within 30 calendar days after receipt of the order.

(b) This section shall become operative on the occurrence of one of the events specified in Section 66 of Chapter 867 of the Statutes of 1997.

SEC. 31. Section 19847A of the Business and Professions Code is amended to read:

19847A. (a) Any person who the commission determines is qualified to receive a state license, having due consideration for the proper protection of the health, safety, and general welfare of the residents of the State of California and the declared policy of this state, may be issued a license. The burden of proving his or her qualifications to receive any license is on the applicant.

(b) An application to receive a license constitutes a request for a determination of the applicant's general character, integrity, and ability to participate in, engage in, or be associated with, controlled gambling.

(c) In reviewing an application for any license, the commission shall consider whether issuance of the license is inimical to public health, safety, or welfare, and whether issuance of the license will undermine public trust that the gambling operations with respect to which the license would be issued are free from criminal and dishonest elements and would be conducted honestly.

(d) This section shall become operative on the occurrence of one of the events specified in Section 66 of Chapter 867 of the Statutes of 1997.

SEC. 32. Section 19942 of the Business and Professions Code is amended to read:

19942. (a) The division, by regulation, shall establish fees for special licenses authorizing irregular operation of tables in excess of the total number of tables otherwise authorized to a licensed gambling establishment, for tournaments and other special events.

(b) This section shall remain in effect only until the occurrence of one of the events specified in Section 66 of the act that added this chapter, and as of that date is repealed, unless a later enacted statute, which is enacted before the occurrence of one of the events specified in Section 66 of the act that added this chapter, deletes or extends that date.

SEC. 33. Section 22252.5 of the Business and Professions Code is amended to read:

22252.5. The Legislature finds and declares that it is important to inform taxpayers that they may make voluntary contributions to certain funds or programs, as provided on the state income tax return. The Legislature further finds and declares that many taxpayers remain unaware of the voluntary contribution check-offs on the state income tax return. Therefore, it is the intent of the Legislature to encourage all persons who prepare state income tax returns, including tax preparers, to inform their clients in writing, prior to the completion of any state income tax return, that they may make a contribution to any voluntary contribution check-off on the state income tax return if they so choose.

SEC. 34. Section 23817.5 of the Business and Professions Code is amended to read:

23817.5. (a) (1) The number of premises for which an off-sale beer and wine license is issued shall be limited to one for each 2,500, or fraction thereof, inhabitants of the city or county in which the premises are situated. No additional off-sale beer and wine license, other than a renewal or transfer or as permitted by Section 23821, shall be issued in any city or county where the number of premises for which all off-sale beer and wine licenses are issued is more than

one for each 2,500, or fraction thereof, inhabitants of the city or county.

(2) The number of premises for which an off-sale beer and wine license is issued in a city and county, in combination with the number of premises for which an off-sale general license is issued in a city and county, shall be limited to one for each 1,250, or fraction thereof, inhabitants of the city and county in which the premises are situated. No additional off-sale beer and wine license, other than a renewal or transfer or as permitted by Section 23821, shall be issued in any city and county where the number of premises for which all off-sale beer and wine licenses in combination with off-sale general licenses are issued is more than one for each 1,250, or fraction thereof, inhabitants of the city and county.

(b) Notwithstanding subdivision (a), a retail off-sale beer and wine replacement license shall be issued upon application when all of the following conditions exist:

(1) The replacement license is only for use at a premises which was licensed within the past 12 months.

(2) The prior licensee abandoned the premises or the original license is subject to a bankruptcy proceeding and the prior licensee has no right to operate at that location. For purposes of this paragraph, "abandoned" means that the prior licensee is not exercising dominion or control over the premises.

(3) The application for a replacement license shall be accompanied by a fee of one hundred dollars ($100).

(c) The following limitations shall apply to the issuance of a replacement license:

(1) The replacement license shall not be transferred to another premises.

(2) All conditions imposed on the original license shall apply to the replacement license.

(3) The original license shall not be transferred subsequent to the issuance of the replacement license.

SEC. 35. Section 24045.14 of the Business and Professions Code is amended to read:

24045.14. (a) Notwithstanding any other provision of this division, the department may issue an on-sale general license to any maritime museum association that has been organized as a nonprofit corporation more than 40 years before the date of application, that owns in its museum inventory not less than three vessels, each of which is 100 feet or more in length, and that is exempt from the payment of income taxes under Section 501(c)(3) of the Internal Revenue Code of 1986.

(b) A maritime museum association holding a license under this section may sell and serve alcoholic beverages only to persons attending prearranged events held onboard its vessels while those vessels are underway or while moored at their home port dock.

(c) A duplicate license shall be required for each vessel in excess of one if alcoholic beverages are sold on the vessel more than 24 times each year.

(d) The original application shall be accompanied by a fee of five hundred dollars ($500) and the applicant shall pay an annual renewal fee and a renewal fee for each duplicate as provided for in subdivision (34) of Section 23320.

(e) Original licenses may be issued pursuant to this section until January 1, 1998.

SEC. 36. Section 24045.15 of the Business and Professions Code 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 services. 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. 37. Section 25503.30 of the Business and Professions Code is amended to read:

25503.30. (a) Notwithstanding any other provision of this division, a winegrower or one or more of its direct or indirect subsidiaries of which the winegrower owns not less than a 51 percent interest, who manufactures, produces, bottles, processes, imports, or sells wine and distilled spirits made from grape wine or other grape products only, under a winegrower's license or any other license issued pursuant to this division, or any officer or director of, or any person holding any interest in, those persons may serve as an officer or director of, and may hold the ownership of any interest or any financial or representative relationship in, any on-sale license, or the business conducted under that license, provided that, except in the case of a holder of on-sale general licenses for airplanes and duplicate on-sale general licenses for air common carriers, all of the following conditions are met:

(1) The on-sale licensee purchases all alcoholic beverages sold and served only from California wholesale licensees.

(2) The number of wine items by brand offered for sale by the on-sale licensee that are produced, bottled, processed, imported, or sold by the licensed winegrower or by the subsidiary of which the winegrower owns not less than 51 percent, or by any officer or director of, or by any person holding any interest in, those persons does not exceed 15 percent of the total wine items by brand listed and offered for sale by the on-sale licensee selling and serving that wine.

(3) None of the persons specified in this section may have any of the interests specified in this section in more than two on-sale licenses.

(b) The Legislature finds that, while this section provides a limited exception for licensed winegrowers, that limited exception is granted for specific purposes, and that it is also necessary and proper that licensed winegrowers maintain the authority granted under this division to sell wine and brandy to any individual consumer or any person holding a license authorizing the sale of wine or brandy.

(c) The Legislature finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales

of alcoholic beverages produced by overly aggressive marketing techniques. The Legislature further finds that the exceptions established by this section to the general prohibition against tied interests must be limited to their express terms so as not to undermine the general prohibition, and the Legislature intends that this section be construed accordingly.

SEC. 38. Section 1714.45 of the Civil Code is amended to read:

1714.45. (a) In a product liability action, a manufacturer or seller shall not be liable if both of the following apply:

(1) The product is inherently unsafe and the product is known to be unsafe by the ordinary consumer who consumes the product with the ordinary knowledge common to the community.

(2) The product is a common consumer product intended for personal consumption, such as sugar, castor oil, alcohol, and butter, as identified in comment i to Section 402A of the Restatement (Second) of Torts.

(b) This section does not exempt the manufacture or sale of tobacco products by tobacco manufacturers and their successors in interest from product liability actions, but does exempt the sale or distribution of tobacco products by any other person, including, but not limited to, retailers or distributors.

(c) For purposes of this section, the term "product liability action" means any action for injury or death caused by a product, except that the term does not include an action based on a manufacturing defect or breach of an express warranty.

(d) This section is intended to be declarative of and does not alter or amend existing California law, including Cronin v. J.B.E. Olson Corp. (1972), 8 Cal. 3d 121, and shall apply to all product liability actions pending on, or commenced after, January 1, 1988.

(e) This section does not apply to, and never applied to, an action brought by a public entity to recover the value of benefits provided to individuals injured by a tobacco-related illness caused by the tortious conduct of a tobacco company or its successor in interest, including, but not limited to, an action brought pursuant to Section 14124.71 of the Welfare and Institutions Code. In the action brought by a public entity, the fact that the injured individual's claim against the defendant may be barred by a prior version of this section shall not be a defense. This subdivision does not constitute a change in, but is declaratory of, existing law relating to tobacco products.

(f) It is the intention of the Legislature in enacting the amendments to subdivisions (a) and (b) of this section adopted at the 1997–98 Regular Session to declare that there exists no statutory bar to tobacco-related personal injury, wrongful death, or other tort claims against tobacco manufacturers and their successors in interest by California smokers or others who have suffered or incurred injuries, damages, or costs arising from the promotion, marketing, sale, or consumption of tobacco products. It is also the intention of the Legislature to clarify that those claims that were or are brought shall

be determined on their merits, without the imposition of any claim of statutory bar or categorical defense.

(g) This section shall not be construed to grant immunity to a tobacco industry research organization.

SEC. 39. Section 2924c of the Civil Code is amended to read:

2924c. (a) (1) Whenever all or a portion of the principal sum of any obligation secured by deed of trust or mortgage on real property or an estate for years therein hereafter executed has, prior to the maturity date fixed in that obligation, become due or been declared due by reason of default in payment of interest or of any installment of principal, or by reason of failure of the trustor or mortgagor to pay, in accordance with the terms of that obligation or of the deed of trust or mortgage, taxes, assessments, premiums for insurance, or advances made by the beneficiary or mortgagee in accordance with the terms of that obligation or of the deed of trust or mortgage, the trustor or mortgagor or his or her successor in interest in the mortgaged or trust property or any part thereof, or any beneficiary under a subordinate deed of trust or any other person having a subordinate lien or encumbrance of record thereon, at any time within the period specified in subdivision (e), if the power of sale therein is to be exercised, or, otherwise at any time prior to entry of the decree of foreclosure, may pay to the beneficiary or the mortgagee or their successors in interest, respectively, the entire amount due, at the time payment is tendered, with respect to (A) all amounts of principal, interest, taxes, assessments, insurance premiums, or advances actually known by the beneficiary to be, and that are, in default and shown in the notice of default, under the terms of the deed of trust or mortgage and the obligation secured thereby, (B) all amounts in default on recurring obligations not shown in the notice of default, and (C) all reasonable costs and expenses, subject to subdivision (c), that are actually incurred in enforcing the terms of the obligation, deed of trust, or mortgage, and trustee's or attorney's fees, subject to subdivision (d), other than the portion of principal as would not then be due had no default occurred, and thereby cure the default theretofore existing, and thereupon, all proceedings theretofore had or instituted shall be dismissed or discontinued and the obligation and deed of trust or mortgage shall be reinstated and shall be and remain in force and effect, the same as if the acceleration had not occurred. This section does not apply to bonds or other evidences of indebtedness authorized or permitted to be issued by the Commissioner of Corporations or made by a public utility subject to the Public Utilities Code. For the purposes of this subdivision, the term "recurring obligation" means all amounts of principal and interest on the loan, or rents, subject to the deed of trust or mortgage in default due after the notice of default is recorded; all amounts of principal and interest or rents advanced on senior liens or leaseholds that are advanced after the recordation of the notice of default; and payments of taxes, assessments, and hazard insurance advanced after

recordation of the notice of default. If the beneficiary or mortgagee has made no advances on defaults that would constitute recurring obligations, the beneficiary or mortgagee may require the trustor or mortgagor to provide reliable written evidence that the amounts have been paid prior to reinstatement.

(2) If the trustor, mortgagor, or other person authorized to cure the default pursuant to this subdivision does cure the default, the beneficiary or mortgagee or the agent for the beneficiary or mortgagee shall, within 21 days following the reinstatement, execute and deliver to the trustee a notice of rescission which rescinds the declaration of default and demand for sale and advises the trustee of the date of reinstatement. The trustee shall cause the notice of rescission to be recorded within 30 days of receipt of the notice of rescission and of all allowable fees and costs.

No charge, except for the recording fee, shall be made against the trustor or mortgagor for the execution and recordation of the notice that rescinds the declaration of default and demand for sale.

(b) (1) The notice of any default described in this section, recorded pursuant to Section 2924, and mailed to any person pursuant to Section 2924b, shall begin with the following statement, printed or typed thereon:

"IMPORTANT NOTICE [14-point boldface type if printed or in capital letters if typed]

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION, [14-point boldface type if printed or in capital letters if typed] and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice).

This amount is _____ as of _____,
(Date)

and will increase until your account becomes current.

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the

beneficiary or mortgagee may require as a condition to reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than the end of the three-month period stated above) to, among other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor.

To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact:

_____

(Name of beneficiary or mortgagee)

_____

(Mailing address)

_____

(Telephone)

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan.

Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

Remember, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION. [14-point boldface type if printed or in capital letters if typed]"

Unless otherwise specified, the notice, if printed, shall appear in at least 12-point boldface type.

If the obligation secured by the deed of trust or mortgage is a contract or agreement described in paragraph (1) or (4) of subdivision (a) of Section 1632, the notice required herein shall be in

Spanish if the trustor requested a Spanish language translation of the contract or agreement pursuant to Section 1632. If the obligation secured by the deed of trust or mortgage is contained in a home improvement contract, as defined in Sections 7151.2 and 7159 of the Business and Professions Code, which is subject to Title 2 (commencing with Section 1801), the seller shall specify on the contract whether or not the contract was principally negotiated in Spanish and if the contract was principally negotiated in Spanish, the notice required herein shall be in Spanish. No assignee of the contract or person authorized to record the notice of default shall incur any obligation or liability for failing to mail a notice in Spanish unless Spanish is specified in the contract or the assignee or person has actual knowledge that the secured obligation was principally negotiated in Spanish. Unless specified in writing to the contrary, a copy of the notice required by subdivision (c) of Section 2924b shall be in English.

(2) Any failure to comply with the provisions of this subdivision shall not affect the validity of a sale in favor of a bona fide purchaser or the rights of an encumbrancer for value and without notice.

(c) Costs and expenses which may be charged pursuant to Sections 2924 to 2924i, inclusive, shall be limited to the costs incurred for recording, mailing, publishing, and posting notices required by Sections 2924 to 2924i, inclusive, postponement pursuant to Section 2924g made to either the beneficiary or trustee not to exceed fifty dollars ($50) per postponement and a fee for a trustee's sale guarantee or, in the event of judicial foreclosure, a litigation guarantee. For purposes of this subdivision, a trustee or beneficiary may purchase a trustee's sale guarantee at a rate meeting the standards contained in Sections 12401.1 and 12401.3 of the Insurance Code.

(d) Trustee's or attorney's fees that may be charged pursuant to subdivision (a), or until the notice of sale is deposited in the mail to the trustor as provided in Section 2924b, if the sale is by power of sale contained in the deed of trust or mortgage, or, otherwise at any time prior to the decree of foreclosure, are hereby authorized to be in an amount that does not exceed two hundred forty dollars ($240) with respect to any portion of the unpaid principal sum secured which is fifty thousand dollars ($50,000) or less, plus one-half of 1 percent of the unpaid principal sum secured exceeding fifty thousand dollars ($50,000) up to and including one hundred fifty thousand dollars ($150,000), plus one-quarter of 1 percent of any portion of the unpaid principal sum secured exceeding one hundred fifty thousand dollars ($150,000) up to and including five hundred thousand dollars ($500,000), plus one-eighth of 1 percent of any portion of the unpaid principal sum secured exceeding five hundred thousand dollars ($500,000). Any charge for trustee's or attorney's fees authorized by this subdivision shall be conclusively presumed to be lawful and valid where the charge does not exceed the amounts authorized herein.

For purposes of this subdivision, the unpaid principal sum secured shall be determined as of the date the notice of default is recorded.

(e) Reinstatement of a monetary default under the terms of an obligation secured by a deed of trust, or mortgage may be made at any time within the period commencing with the date of recordation of the notice of default until five business days prior to the date of sale set forth in the initial recorded notice of sale.

If the sale does not take place on the date set forth in the initial recorded notice of sale or a subsequent recorded notice of sale is required to be given, the right of reinstatement shall be revived as of the date of recordation of the subsequent notice of sale, and shall continue from that date until five business days prior to the date of sale set forth in the subsequently recorded notice of sale.

If the date of sale is postponed on the date of sale set forth in either an initial or any subsequent notice of sale, or is postponed on the date declared for sale at an immediately preceding postponement of sale, and, the postponement is for a period that exceeds five business days from the date set forth in the notice of sale, or declared at the time of postponement, then the right of reinstatement is revived as of the date of postponement and shall continue from that date until five business days prior to the date of sale declared at the time of the postponement.

Nothing contained herein shall give rise to a right of reinstatement during the period of five business days prior to the date of sale, whether the date of sale is noticed in a notice of sale or declared at a postponement of sale.

Pursuant to this subdivision, no beneficiary, trustee, mortgagee, or their agents or successors shall be liable in any manner to a trustor, mortgagor, their agents or successors for the failure to allow a reinstatement of the obligation secured by a deed of trust or mortgage during the period of five business days prior to the sale of the security property, and no such right of reinstatement during this period is created by this section. Any right of reinstatement created by this section is terminated five business days prior to the date of sale set forth in the initial date of sale, and is revived only as prescribed herein and only as of the date set forth herein.

As used in this subdivision, the term "business day" has the same meaning as specified in Section 9.

SEC. 40. Section 3333.4 of the Civil Code is amended and renumbered to read:

3333.5. (a) Each pipeline corporation that qualifies as a public utility within Section 216 of the Public Utilities Code that transports any crude oil or fraction thereof in a public utility oil pipeline system that meets the requirements of subdivision (h) shall be absolutely liable without regard to fault for any damages incurred by any injured party that arise out of, or are caused by, the discharge or leaking of crude oil or fraction thereof from the public utility pipeline.

(b) A pipeline corporation is not liable to an injured party under this section for any of the following:

(1) Damages, other than costs of removal incurred by the state or a local government caused solely by an act of war, hostilities, civil war, or insurrection or by an unanticipated grave natural disaster or other act of God of an exceptional, inevitable, and irresistible character, other than an earthquake, which damages could not have been prevented or avoided by the exercise of due care or foresight.

(2) Damages in the proportion caused by the negligence, intentional malfeasance, or criminal act of the landowner, or an agent, employee, or contractor of the landowner, upon whose property the pipeline system is located.

(3) Except as provided by paragraph (2), damages caused solely by the negligence or intentional malfeasance of the injured person.

(4) Except as provided by paragraph (2), damages caused solely by the criminal act of a third party other than the pipeline corporation or an agent or employee of the pipeline corporation.

(5) Natural seepage from sources other than the public utility oil pipeline.

(6) Damages that arise out of, or are caused by, a discharge that is authorized by a state or federal permit.

(c) Damages for which a pipeline corporation is liable under this section are the following:

(1) All costs of response, containment, cleanup, removal, and treatment, including, but not limited to, monitoring and administration costs.

(2) Injury to, or economic losses resulting from destruction of or injury to, real or personal property.

(3) Injury to, destruction of, or loss of, natural resources, including, but not limited to, the reasonable cost of rehabilitating wildlife, habitat, and other resources and the reasonable cost of assessing that injury, destruction, or loss, in any action brought by the state, a county, city, or district.

(4) Loss of taxes, royalties, rents, use, or profit shares caused by the injury, destruction, loss, or impairment of use of real property, personal property, or natural resources.

(5) Loss of use and enjoyment of natural resources and other public resources or facilities in any action brought by the state, county, city, or district.

(d) The court may award reasonable costs of the suit, attorneys' fees, and the cost of any necessary expert witnesses to any prevailing plaintiff. The court may award reasonable costs of the suit, attorneys' fees, and the cost of any necessary expert witnesses to any prevailing defendant if the court finds that the plaintiff commenced or prosecuted the suit under this section in bad faith or solely for purposes of harassing the defendant.

(e) (1) A pipeline corporation shall immediately clean up all crude oil, or any fraction thereof, that leaks or is discharged from a

pipeline subject to this section. Additionally, the pipeline corporation shall abate immediately, or as soon as practical, the effects of the leak or discharge and take all other necessary remedial action.

(2) A pipeline corporation may recover the costs of the activities specified in this section for which it is not at fault by means of any otherwise available cause of action, including, but not limited to, indemnification or subrogation.

(f) This section shall not apply to claims, or causes of action, for damages for personal injury or wrongful death.

(g) This section shall not prohibit any party from bringing any action for damages under any other provision or principle of law, including but not limited to, common law. However, damages shall not be awarded pursuant to this section to an injured party to the extent the same party is or has been awarded damages for the same injury under any other provision or principle of law.

(h) This section shall only apply to all of the following:

(1) The pipeline system proposed to be constructed by Pacific Pipeline System, Inc., identified in Public Utilities Commission Application No. 91-10-013, for which the maximum requirement of one hundred million dollars ($100,000,000) set forth in paragraph (1) of subdivision (j) shall apply.

(2) Any other public utility pipeline system for which construction is completed on or after January 1, 1996, other than a pipeline system the entire length of which is subject to the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, (Division 7.8 (commencing with Section 8750) of the Public Resources Code). If part, but not all, of a pipeline system is subject to the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, any evidence of financial responsibility that satisfies that act, and that meets the conditions of this section, shall be credited toward the requirements of this section.

(3) Any major relocation of three miles or greater of a portion of a pipeline system along substantially new alignments accomplished through the exercise of eminent domain. This section shall not apply to the portions of the pipeline not relocated.

(i) This section shall not apply to the following:

(1) A pipeline system in existence prior to January 1, 1996, that is converted to a public utility prior or subsequent to January 1, 1996.

(2) A public utility pipeline system not otherwise subject to this section, that is the object of repair, replacement or maintenance, unless that activity constitutes relocation as described in paragraph (3) of subdivision (h).

(j) (1) No pipeline system subject to this section shall be permitted to operate unless the State Fire Marshal certifies that the pipeline corporation demonstrates sufficient financial responsibility to respond to the liability imposed by this section. The minimum financial responsibility required by the State Fire Marshal shall be seven hundred fifty dollars ($750) times the maximum capacity of the

pipeline in the number of barrels per day up to a maximum of one hundred million dollars ($100,000,000) per pipeline system, or a maximum of two hundred million dollars ($200,000,000) per multiple pipeline systems.

(2) For the purposes of this section, financial responsibility shall be demonstrated by evidence that is substantially equivalent to that required by regulations issued under Section 8670.37.54 of the Government Code, including insurance, surety bond, letter of credit, guaranty, qualification as a self-insurer, or combination thereof or any other evidence of financial responsibility. The State Fire Marshal shall require the documentation evidencing financial responsibility to be placed on file with that office, and shall administer the documentation in a manner substantially equivalent to that provided by regulations issued under Section 8670.37.54 of the Government Code. Financial responsibility shall be available for payment of claims for damages described in subdivision (c) of any party, including, but not limited to, the State of California, local governments, special districts, and private parties, that obtains a final judgment therefor against the pipeline corporation.

(k) The State Fire Marshal shall require evidence of financial responsibility to fund postclosure cleanup costs. The evidence of financial responsibility shall be 15 percent of the amount of financial responsibility required under subdivision (j) and shall be maintained by the pipeline corporation for four years from the date the pipeline is fully idled pursuant to a closure plan approved by the State Fire Marshal.

(*l*) "Fraction" of crude oil means a group of compounds collected by fractional distillation that condenses within the same temperature band, or a material that consists primarily of that group of compounds or of a mixture of those groups of compounds.

(m) (1) Notwithstanding Section 228 of the Public Utilities Code, for purposes of this section, "pipeline corporation" means every corporation or person directly operating, managing or owning any pipeline system that qualifies as a public utility within Section 216 of the Public Utilities Code and for compensation within this state.

(2) For purposes of this section, "owning" refers to the legal entity owning the pipeline system itself and does not include legal entities having an ownership interest, in whole or in part, in the entity owning the pipeline system or multiple pipeline systems.

(3) "Pipeline system" means a collective assemblage of intrastate line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery station, and fabricated assemblies constructed for the same purpose at substantially the same time that form a facility through which crude oil or a fraction thereof moves in transportation.

SEC. 41. Section 14312 of the Corporations Code is amended to read:

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 of 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 has 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 State Director of Health Services, 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 will 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 the 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 the price if the difference is justified, as 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 State Director of Health Services 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.

SEC. 42. Section 15052 of the Corporations Code is amended to read:

15052. (a) At the time of registration pursuant to Section 15049, in the case of a registered limited liability partnership, or pursuant to Section 15055, in the case of a foreign limited liability partnership, and at all times during which those partnerships transact intrastate business, every registered limited liability partnership and foreign limited liability partnership shall provide security for claims against it as follows:

(1) For claims based upon acts, errors, or omissions arising out of the practice of public accountancy, a registered limited liability partnership or foreign limited liability partnership providing accountancy services shall comply with one, or pursuant to subdivision (b) some combination, of the following:

(A) Maintaining a policy or policies of insurance against liability imposed on or against it by law for damages arising out of claims in an amount for each claim of at least one hundred thousand dollars ($100,000) multiplied by the number of licensed persons rendering professional services on behalf of the partnership. However, the total aggregate limit of liability under the policy or policies of insurance for partnerships with fewer than five licensed persons shall be not less than five hundred thousand dollars ($500,000), and for all other partnerships is not required to exceed five million dollars ($5,000,000) in any one designated period, less amounts paid in defending, settling, or discharging claims as set forth in this subparagraph. The policy or policies may be issued on a claims-made or occurrence basis, and shall cover (i) in the case of a claims-made policy, claims initially asserted in the designated period, and (ii) in the case of an occurrence policy, occurrences during the designated period. For purposes of this subparagraph, "designated period" means a policy year or any other period designated in the policy that is not greater than 12 months. The impairment or exhaustion of the aggregate limit of liability by amounts paid under the policy in connection with the settlement, discharge, or defense of claims applicable to a designated period shall not require the partnership to acquire additional insurance coverage for that designated period. The policy or policies of insurance may be in a form reasonably available in the commercial insurance market and may be subject to those terms, conditions, exclusions, and endorsements that are typically contained in those policies. A policy or policies of insurance maintained pursuant to this subparagraph may be subject to a deductible or self-insured retention.

Upon the dissolution and winding up of the partnership, the partnership shall, with respect to any insurance policy or policies then maintained pursuant to this subparagraph, maintain or obtain an extended reporting period endorsement or equivalent provision in the maximum total aggregate limit of liability required to comply with this subparagraph for a minimum of three years if reasonably available from the insurer.

(B) Maintaining in trust or bank escrow, cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance or surety companies as security for payment of liabilities imposed by law for damages arising out of all claims in an amount of at least one hundred thousand dollars ($100,000) multiplied by the number of licensed persons rendering professional services on behalf of the partnership. However, the amount of security for partnerships with fewer than five licensed persons shall be not less than five hundred thousand dollars ($500,000), and for all other partnerships is not required to exceed five million dollars ($5,000,000). The partnership remains in compliance with this subparagraph during a calendar year notwithstanding amounts paid during that calendar year from the accounts, funds, Treasury obligations, letters of credit, or bonds in defending, settling, or discharging claims of the type described in this paragraph, if the amount of the accounts, funds, Treasury obligations, letters of credit, or bonds was at least the amount specified in the preceding sentence as of the first business day of that calendar year. Notwithstanding the pendency of other claims against the partnership, a registered limited liability partnership or foreign limited liability partnership shall be deemed to be in compliance with this subparagraph as to a claim if within 30 days after the time that the claim is initially asserted through service of a summons, complaint, or comparable pleading in a judicial or administrative proceeding, the partnership has provided the required amount of security by designating and segregating funds in compliance with the requirement of this subparagraph.

(C) Unless the partnership has satisfied the requirements of subparagraph (D), each partner of a registered limited liability partnership or foreign limited liability partnership providing accountancy services, by virtue of that person's status as a partner, thereby automatically guarantees payment of the difference between the maximum amount of security required for the partnership by this paragraph and the security otherwise provided in accordance with subparagraphs (A) and (B), provided that the aggregate amount payable by all partners under these guarantees shall not exceed the amount of that difference. Neither withdrawal by a partner nor the dissolution and winding up of the partnership shall affect the rights or obligations of a partner arising prior to withdrawal or dissolution and winding up, and the guarantee provided for in this subparagraph shall apply only to conduct that occurred prior to the withdrawal or dissolution and winding up.

Nothing contained in this subparagraph shall affect or impair the rights or obligations of the partners among themselves, or the partnership, including, but not limited to, rights of contribution, subrogation, or indemnification.

(D) Confirming, pursuant to the procedure in subdivision (c), that, as of the most recently completed fiscal year of the partnership, it had a net worth equal to or exceeding ten million dollars ($10,000,000).

(2) For claims based upon acts, errors, or omissions arising out of the practice of law, a registered limited liability partnership or foreign limited liability partnership providing legal services shall comply with one, or pursuant to subdivision (b) some combination, of the following:

(A) Each registered limited liability partnership or foreign limited liability partnership providing legal services shall maintain a policy or policies of insurance against liability imposed on or against it by law for damages arising out of claims in an amount for each claim of at least one hundred thousand dollars ($100,000) multiplied by the number of licensed persons rendering professional services on behalf of the partnership. However, the total aggregate limit of liability under the policy or policies of insurance for partnerships with fewer than five licensed persons shall be not less than five hundred thousand dollars ($500,000), and for all other partnerships is not required to exceed seven million five hundred thousand dollars ($7,500,000) in any one designated period, less amounts paid in defending, settling, or discharging claims as set forth in this subparagraph. The policy or policies may be issued on a claims-made or occurrence basis, and shall cover (i) in the case of a claims-made policy, claims initially asserted in the designated period, and (ii) in the case of an occurrence policy, occurrences during the designated period. For purposes of this subparagraph, "designated period" means a policy year or any other period designated in the policy that is not greater than 12 months. The impairment or exhaustion of the aggregate limit of liability by amounts paid under the policy in connection with the settlement, discharge, or defense of claims applicable to a designated period shall not require the partnership to acquire additional insurance coverage for that designated period. The policy or policies of insurance may be in a form reasonably available in the commercial insurance market and may be subject to those terms, conditions, exclusions, and endorsements that are typically contained in those policies. A policy or policies of insurance maintained pursuant to this subparagraph may be subject to a deductible or self-insured retention.

Upon the dissolution and winding up of the partnership, the partnership shall, with respect to any insurance policy or policies then maintained pursuant to this subparagraph, maintain or obtain an extended reporting period endorsement or equivalent provision in the maximum total aggregate limit of liability required to comply

with this subparagraph for a minimum of three years if reasonably available from the insurer.

(B) Each registered limited liability partnership or foreign limited liability partnership providing legal services shall maintain in trust or bank escrow, cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance or surety companies as security for payment of liabilities imposed by law for damages arising out of all claims in an amount of at least one hundred thousand dollars ($100,000) multiplied by the number of licensed persons rendering professional services on behalf of the partnership. However, the amount of security for partnerships with fewer than five licensed persons shall be not less than five hundred thousand dollars ($500,000), and for all other partnerships is not required to exceed seven million five hundred thousand dollars ($7,500,000). The partnership remains in compliance with this subparagraph during a calendar year notwithstanding amounts paid during that calendar year from the accounts, funds, Treasury obligations, letters of credit, or bonds in defending, settling, or discharging claims of the type described in this paragraph, if the amount of the accounts, funds, Treasury obligations, letters of credit, or bonds was at least the amount specified in the preceding sentence as of the first business day of that calendar year. Notwithstanding the pendency of other claims against the partnership, a registered limited liability partnership or foreign limited liability partnership shall be deemed to be in compliance with this subparagraph as to a claim if within 30 days after the time that the claim is initially asserted through service of a summons, complaint, or comparable pleading in a judicial or administrative proceeding, the partnership has provided the required amount of security by designating and segregating funds in compliance with the requirements of this subparagraph.

(C) Unless the partnership has satisfied the requirements of subparagraph (D), each partner of a registered limited liability partnership or foreign limited liability partnership providing legal services, by virtue of that person's status as a partner, thereby automatically guarantees payment of the difference between the maximum amount of security required for the partnership by this paragraph and the security otherwise provided in accordance with the provisions of subparagraphs (A) and (B); provided, that the aggregate amount payable by all partners under these guarantees shall not exceed the amount of that difference. Neither withdrawal by a partner nor the dissolution and winding up of the partnership shall affect the rights or obligations of a partner arising prior to withdrawal or dissolution and winding up, and the guarantee provided for in this subparagraph shall apply only to conduct that occurred prior to the withdrawal or dissolution and winding up. Nothing contained in this subparagraph affects or impairs the rights or obligations of the partners among themselves, or the partnership,

including, but not limited to, rights of contribution, subrogation, or indemnification.

(D) Confirming, pursuant to the procedure in subdivision (c), that, as of the most recently completed fiscal year of the partnership, it had a net worth equal to or exceeding fifteen million dollars ($15,000,000).

(b) For purposes of satisfying the security requirements of this section, a registered limited liability partnership or foreign limited liability partnership may aggregate the security provided by it pursuant to subparagraphs (A), (B), (C), and (D) of paragraph (1) of subdivision (a) or subparagraphs (A), (B), (C), and (D) of paragraph (2) of subdivision (a), as the case may be. Any registered limited liability partnership or foreign limited liability partnership intending to comply with the alternative security provisions set forth in subparagraph (D) of paragraph (1) of subdivision (a) or subparagraph (D) of paragraph (2) of subdivision (a) shall furnish the following information to the office of the Secretary of State, in the manner prescribed in, and accompanied by all information required by, the applicable section:

TRANSMITTAL FORM FOR EVIDENCING COMPLIANCE WITH SECTION 15052(a)(1)(D) OR SECTION 15052(a)(2)(D) OF THE CALIFORNIA CORPORATIONS CODE

The undersigned hereby confirms the following:

1. _____
Name of registered or foreign limited liability partnership

2. _____
Jurisdiction where partnership is organized

3. _____
Address of principal office

4. The registered or foreign limited liability partnership chooses to satisfy the requirements of Section 15052 by confirming, pursuant to Section 15052(a)(1)(D) or 15052(a)(2)(D) and pursuant to Section 15052(c), that, as of the most recently completed fiscal year, the partnership had a net worth equal to or exceeding ten million dollars ($10,000,000), in the case of a partnership providing accountancy services, or fifteen million dollars ($15,000,000), in the case of a partnership providing legal services.

5. _____
Title of authorized person executing this form

6. _____
Signature of authorized person executing this form

(c) Pursuant to subparagraph (D) of paragraph (1) of subdivision (a) or subparagraph (D) of paragraph (2) of subdivision (a), a registered limited liability partnership or foreign limited liability partnership may satisfy the requirements of this section by confirming that, as of the last day of its most recently completed fiscal year, it had a net worth equal to or exceeding the amount required. In order to comply with this alternative method of meeting the requirements established in this section, a registered limited liability partnership or foreign limited liability partnership shall file an annual confirmation with the office of the Secretary of State, signed by an authorized member of the registered limited liability partnership or foreign limited liability partnership, accompanied by a transmittal form as prescribed by subdivision (b). In order to be current in a given year, the partnership form for confirming compliance with the optional security requirement shall be filed within four months of the completion of the fiscal year and, upon being filed, shall constitute full compliance with the financial security requirements for purposes of this section as of the beginning of the fiscal year. A confirmation filed during any particular fiscal year shall continue to be effective for the first four months of the next succeeding fiscal year.

(d) Neither the existence of the requirements of subdivision (a) nor the extent of compliance by the registered limited liability partnership or foreign limited liability partnership with the alternative requirements in this section shall be admissible in court or in any way be made known to a jury or other trier of fact in determining an issue of liability for, or to the extent of, the damages in question.

(e) Notwithstanding any other provision of this section, if a registered limited liability partnership or foreign limited liability partnership is otherwise in compliance with the terms of this section at the time that a bankruptcy or other insolvency proceeding is commenced with respect to the registered limited liability partnership or foreign limited liability partnership, it shall be deemed to be in compliance with this section during the pendency of the proceeding. A registered limited liability partnership that has been the subject of a bankruptcy or other insolvency proceeding and that conducts business after the proceeding ends shall thereafter comply with paragraph (1) or (2) of subdivision (a), in order to obtain the limitations on liability afforded by subdivision (b) of Section 15015.

SEC. 43. Section 16956 of the Corporations Code is amended to read:

16956. (a) At the time of registration pursuant to Section 16953, in the case of a registered limited liability partnership, or pursuant to Section 16959, in the case of a foreign limited liability partnership, and at all times during which those partnerships transact intrastate business, every registered limited liability partnership and foreign limited liability partnership shall provide security for claims against it as follows:

(1) For claims based upon acts, errors, or omissions arising out of the practice of public accountancy, a registered limited liability partnership or foreign limited liability partnership providing accountancy services shall comply with one, or pursuant to subdivision (b) some combination, of the following:

(A) Maintaining a policy or policies of insurance against liability imposed on or against it by law for damages arising out of claims in an amount for each claim of at least one hundred thousand dollars ($100,000) multiplied by the number of licensed persons rendering professional services on behalf of the partnership. However, the total aggregate limit of liability under the policy or policies of insurance for partnerships with fewer than five licensed persons shall be not less than five hundred thousand dollars ($500,000), and for all other partnerships is not required to exceed five million dollars ($5,000,000) in any one designated period, less amounts paid in defending, settling, or discharging claims as set forth in this subparagraph. The policy or policies may be issued on a claims-made or occurrence basis, and shall cover: (i) in the case of a claims-made policy, claims initially asserted in the designated period, and (ii) in the case of an occurrence policy, occurrences during the designated period. For purposes of this subparagraph, "designated period" means a policy year or any other period designated in the policy that is not greater than 12 months. The impairment or exhaustion of the aggregate limit of liability by amounts paid under the policy in connection with the settlement, discharge, or defense of claims applicable to a designated period shall not require the partnership to acquire additional insurance coverage for that designated period. The policy or policies of insurance may be in a form reasonably available in the commercial insurance market and may be subject to those terms, conditions, exclusions, and endorsements that are typically contained in those policies. A policy or policies of insurance maintained pursuant to this subparagraph may be subject to a deductible or self-insured retention.

Upon the dissolution and winding up of the partnership, the partnership shall, with respect to any insurance policy or policies then maintained pursuant to this subparagraph, maintain or obtain an extended reporting period endorsement or equivalent provision in the maximum total aggregate limit of liability required to comply

with this subparagraph for a minimum of three years if reasonably available from the insurer.

(B) Maintaining in trust or bank escrow, cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance or surety companies as security for payment of liabilities imposed by law for damages arising out of all claims in an amount of at least one hundred thousand dollars ($100,000) multiplied by the number of licensed persons rendering professional services on behalf of the partnership. However, the amount of security for partnerships with fewer than five licensed persons shall be not less than five hundred thousand dollars ($500,000), and for all other partnerships is not required to exceed five million dollars ($5,000,000). The partnership remains in compliance with this subparagraph during a calendar year notwithstanding amounts paid during that calendar year from the accounts, funds, Treasury obligations, letters of credit, or bonds in defending, settling, or discharging claims of the type described in this paragraph, if the amount of those accounts, funds, Treasury obligations, letters of credit, or bonds was at least the amount specified in the preceding sentence as of the first business day of that calendar year. Notwithstanding the pendency of other claims against the partnership, a registered limited liability partnership or foreign limited liability partnership shall be deemed to be in compliance with this subparagraph as to a claim if within 30 days after the time that the claim is initially asserted through service of a summons, complaint, or comparable pleading in a judicial or administrative proceeding, the partnership has provided the required amount of security by designating and segregating funds in compliance with the requirements of this subparagraph.

(C) Unless the partnership has satisfied the requirements of subparagraph (D), each partner of a registered limited liability partnership or foreign limited liability partnership providing accountancy services, by virtue of that person's status as a partner, thereby automatically guarantees payment of the difference between the maximum amount of security required for the partnership by this paragraph and the security otherwise provided in accordance with subparagraphs (A) and (B), provided that the aggregate amount payable by all partners under these guarantees shall not exceed the amount of that difference. Neither withdrawal by a partner nor the dissolution and winding up of the partnership shall affect the rights or obligations of a partner arising prior to withdrawal or dissolution and winding up, and the guarantee provided for in this subparagraph shall apply only to conduct that occurred prior to the withdrawal or dissolution and winding up. Nothing contained in this subparagraph shall affect or impair the rights or obligations of the partners among themselves, or the partnership, including, but not limited to, rights of contribution, subrogation, or indemnification.

(D) Confirming, pursuant to the procedure in subdivision (c), that, as of the most recently completed fiscal year of the partnership, it had a net worth equal to or exceeding ten million dollars ($10,000,000).

(2) For claims based upon acts, errors, or omissions arising out of the practice of law, a registered limited liability partnership or foreign limited liability partnership providing legal services shall comply with one, or pursuant to subdivision (b) some combination, of the following:

(A) Each registered limited liability partnership or foreign limited liability partnership providing legal services shall maintain a policy or policies of insurance against liability imposed on or against it by law for damages arising out of claims in an amount for each claim of at least one hundred thousand dollars ($100,000) multiplied by the number of licensed persons rendering professional services on behalf of the partnership. However, the total aggregate limit of liability under the policy or policies of insurance for partnerships with fewer than five licensed persons shall be not less than five hundred thousand dollars ($500,000), and for all other partnerships is not required to exceed seven million five hundred thousand dollars ($7,500,000) in any one designated period, less amounts paid in defending, settling, or discharging claims as set forth in this subparagraph. The policy or policies may be issued on a claims-made or occurrence basis, and shall cover (i) in the case of a claims-made policy, claims initially asserted in the designated period, and (ii) in the case of an occurrence policy, occurrences during the designated period. For purposes of this subparagraph, "designated period" means a policy year or any other period designated in the policy that is not greater than 12 months. The impairment or exhaustion of the aggregate limit of liability by amounts paid under the policy in connection with the settlement, discharge, or defense of claims applicable to a designated period shall not require the partnership to acquire additional insurance coverage for that designated period. The policy or policies of insurance may be in a form reasonably available in the commercial insurance market and may be subject to those terms, conditions, exclusions, and endorsements that are typically contained in those policies. A policy or policies of insurance maintained pursuant to this subparagraph may be subject to a deductible or self-insured retention.

Upon the dissolution and winding up of the partnership, the partnership shall, with respect to any insurance policy or policies then maintained pursuant to this subparagraph, maintain or obtain an extended reporting period endorsement or equivalent provision in the maximum total aggregate limit of liability required to comply with this subparagraph for a minimum of three years if reasonably available from the insurer.

(B) Each registered limited liability partnership or foreign limited liability partnership providing legal services shall maintain in

trust or bank escrow, cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance or surety companies as security for payment of liabilities imposed by law for damages arising out of all claims in an amount of at least one hundred thousand dollars ($100,000) multiplied by the number of licensed persons rendering professional services on behalf of the partnership. However, the amount of security for partnerships with fewer than five licensed persons shall be not less than five hundred thousand dollars ($500,000), and for all other partnerships is not required to exceed seven million five hundred thousand dollars ($7,500,000). The partnership remains in compliance with this subparagraph during a calendar year notwithstanding amounts paid during that calendar year from the accounts, funds, Treasury obligations, letters of credit, or bonds in defending, settling, or discharging claims of the type described in this paragraph, if the amount of those accounts, funds, Treasury obligations, letters of credit, or bonds was at least the amount specified in the preceding sentence as of the first business day of that calendar year. Notwithstanding the pendency of other claims against the partnership, a registered limited liability partnership or foreign limited liability partnership shall be deemed to be in compliance with this subparagraph as to a claim if within 30 days after the time that the claim is initially asserted through service of a summons, complaint, or comparable pleading in a judicial or administrative proceeding, the partnership has provided the required amount of security by designating and segregating funds in compliance with the requirement of this subparagraph.

(C) Unless the partnership has satisfied the requirements of subparagraph (D), each partner of a registered limited liability partnership or foreign limited liability partnership providing legal services, by virtue of that person's status as a partner, thereby automatically guarantees payment of the difference between the maximum amount of security required for the partnership by this paragraph and the security otherwise provided in accordance with the provisions of subparagraphs (A) and (B); provided, that the aggregate amount payable by all partners under these guarantees shall not exceed the amount of that difference. Neither withdrawal by a partner nor the dissolution and winding up of the partnership shall affect the rights or obligations of a partner arising prior to withdrawal or dissolution and winding up, and the guarantee provided for in this subparagraph shall apply only to conduct that occurred prior to the withdrawal or dissolution and winding up. Nothing contained in this subparagraph affects or impairs the rights or obligations of the partners among themselves, or the partnership, including, but not limited to, rights of contribution, subrogation, or indemnification.

(D) Confirming, pursuant to the procedure in subdivision (c), that, as of the most recently completed fiscal year of the partnership,

it had a net worth equal to or exceeding fifteen million dollars ($15,000,000).

(b) For purposes of satisfying the security requirements of this section, a registered limited liability partnership or foreign limited liability partnership may aggregate the security provided by it pursuant to subparagraphs (A), (B), (C), and (D) of paragraph (1) of subdivision (a) or subparagraphs (A), (B), (C), and (D) of paragraph (2) of subdivision (a), as the case may be. Any registered limited liability partnership or foreign limited liability partnership intending to comply with the alternative security provisions set forth in subparagraph (D) of paragraph (1) of subdivision (a) or subparagraph (D) of paragraph (2) of subdivision (a) shall furnish the following information to the office of the Secretary of State, in the manner prescribed in, and accompanied by all information required by, the applicable section:

TRANSMITTAL FORM FOR EVIDENCING COMPLIANCE
WITH SECTION 16956(a)(1)(D) OR SECTION 16956(a)(2)(D)
OF THE CALIFORNIA CORPORATIONS CODE

The undersigned hereby confirms the following:

1. _____
Name of registered or foreign limited liability partnership

2. _____
Jurisdiction where partnership is organized

3. _____
Address of principal office

4. The registered or foreign limited liability partnership chooses to satisfy the requirements of Section 16956 by confirming, pursuant to Section 16956(a)(1)(D) or 16956(a)(2)(D) and pursuant to Section 16956(c), that, as of the most recently completed fiscal year, the partnership had a net worth equal to or exceeding ten million dollars ($10,000,000), in the case of a partnership providing accountancy services, or fifteen million dollars ($15,000,000) in the case of a partnership providing legal services.

5. _____
Title of authorized person executing this form

6. _____
Signature of authorized person executing this form

(c) Pursuant to subparagraph (D) of paragraph (1) of subdivision (a) or subparagraph (D) of paragraph (2) of subdivision (a), a registered limited liability partnership or foreign limited liability partnership may satisfy the requirements of this section by confirming that, as of the last day of its most recently completed fiscal year, it had a net worth equal to or exceeding the amount required. In order to comply with this alternative method of meeting the requirements established in this section, a registered limited liability partnership or foreign limited liability partnership shall file an annual confirmation with the office of the Secretary of State, signed by an authorized member of the registered limited liability partnership or foreign limited liability partnership, accompanied by a transmittal form as prescribed by subdivision (b). In order to be current in a given year, the partnership form for confirming compliance with the optional security requirement shall be filed within four months of the completion of the fiscal year and, upon being filed, shall constitute full compliance with the financial security requirements for purposes of this section as of the beginning of the fiscal year. A confirmation filed during any particular fiscal year shall continue to be effective for the first four months of the next succeeding fiscal year.

(d) Neither the existence of the requirements of subdivision (a) nor the extent of compliance by the registered limited liability partnership or foreign limited liability partnership with the alternative requirements in this section shall be admissible in court or in any way be made known to a jury or other trier of fact in determining an issue of liability for, or to the extent of, the damages in question.

(e) Notwithstanding any other provision of this section, if a registered limited liability partnership or foreign limited liability partnership is otherwise in compliance with the terms of this section at the time that a bankruptcy or other insolvency proceeding is commenced with respect to the registered limited liability partnership or foreign limited liability partnership, it shall be deemed to be in compliance with this section during the pendency of the proceeding. A registered limited liability partnership that has been the subject of a bankruptcy or other insolvency proceeding and that conducts business after the proceeding ends shall thereafter comply with paragraph (1) or (2) of subdivision (a), in order to obtain the limitations on liability afforded by subdivision (c) of Section 16306.

SEC. 44. Section 11301 of the Education Code is amended to read:

11301. (a) The California Community Colleges and the State Department of Education shall collaborate with each other and with their respective local community colleges and local school districts to ensure the continued success of existing middle college high schools and to promote the establishment of new middle college high schools.

(b) The responsibilities of the California Community Colleges and the State Department of Education pursuant to subdivision (a) shall include, but need not be limited to, the following:

(1) With respect to existing middle college high schools, monitor the ongoing viability of the programs, assist with the resolution of policy or financial issues that may arise, and track specific outcomes for students and schools, including attendance rates, graduation rates, college entrance and attendance rates, and employment rates for those students who do not attend college.

(2) With respect to the promotion of new middle college high schools, respond to inquiries from school districts and community colleges about the establishment of middle college high schools, advise local entities on startup costs and ongoing funding mechanisms for the program, consult with local entities on the organizational structure of, and curriculum development for, the middle college high schools, facilitate the completion of any necessary facilities improvements, communicate with local entities at least biannually about the existence of middle college high schools and the availability of State Department of Education and California Community Colleges resources, if any, to assist with the establishment of middle college high schools.

SEC. 45. Section 17016 of the Education Code is amended to read:

17016. (a) The board, by the adoption of rules, may establish priorities for the construction and leasing of projects to those school districts the pupils of which will benefit most. The board may make exceptions from established priorities when it determines that to do so will benefit the pupils affected.

(b) The board may adopt rules establishing priorities for the acquisition and leasing of portable classrooms to county superintendents of schools that will most benefit pupils needing a county community school. The board shall require each county superintendent of schools who leases portable classrooms pursuant to Section 17017.2 to demonstrate that the portable classrooms are utilized solely for operation of a county community school.

SEC. 46. Section 17203.5 of the Education Code is amended to read:

17203.5. Notwithstanding any other provision of law, to be eligible for funding under this chapter pursuant to Section 17203, a school district shall comply with the following:

(a) In the 1997–98 fiscal year, identify by grade level all available teaching stations in the schools in the school district that serve kindergarten or any grades 1 to 6, inclusive. For the purposes of this

section, "teaching station" shall be determined as specified in Sections 17042.5 and 17042.7.

(b) Notwithstanding paragraphs (1) to (3), inclusive, of subdivision (b) of Section 52122.1, in the 1997–98 fiscal year, for the purposes only of determining eligibility for funding under subdivisions (c) to (i), inclusive, of Section 52122.1, a school district is not required to count teaching stations at a schoolsite leased to outside agencies prior to July 1, 1996.

SEC. 47. Section 17591 of the Education Code is amended to read:

17591. Each district desiring an apportionment pursuant to Section 39619 shall file with the State Allocation Board and receive approval of a five-year plan of the maintenance needs of the district over that five-year period. This plan may be amended from time to time. Any expenditure of funds from the district deferred maintenance fund shall conform to the plan approved by the State Allocation Board.

SEC. 48. Section 17883 of the Education Code is amended and renumbered to read:

17183. (a) From time to time, the authority may, by resolution, issue its revenue bonds in order to provide funds for any of the purposes of this chapter. Bonds may be issued to finance any of the following:

(1) A single project or financing of working capital for a single participating district.

(2) A series of projects or financings of working capital for a single participating district.

(3) A single project or financing of working capital for several participating districts.

(4) Several projects or financing of working capital for several participating districts.

(5) A joint venture school facilities construction project undertaken pursuant to Article 5 (commencing with Section 17060) of Chapter 12.

(b) Except as otherwise expressly provided by the authority, all revenue bonds shall be payable from any available revenues or moneys of the authority not otherwise pledged, subject only to any agreements with holders of particular bonds or notes pledging any particular revenue or moneys. Notwithstanding that revenue bonds issued pursuant to this section may be payable from a special fund, the revenue bonds shall be, and shall be deemed to be for all purposes, negotiable instruments, subject only to the provisions of the revenue bonds for registration.

(c) The revenue bonds of the authority may be issued as serial bonds, term bonds, or the authority, in its discretion, may issue bonds of both types. The issuance shall be in accordance with the indenture, trust agreement, or resolution relating to the revenue bonds, which shall provide all of the following:

(1) The date or dates of the bonds.

(2) The date or dates upon which the bonds will mature, not to exceed 40 years from their respective dates.

(3) The interest rate or rates, or methods of determining the interest rate or rates, of the bonds.

(4) When the bonds are payable.

(5) The denominations of the bonds.

(6) The form of the bonds, which shall be either bearer or registered.

(7) The registration privileges of the bonds.

(8) The manner in which the bonds are to be executed.

(9) The place or places at which the bonds shall be payable in lawful money of the United States of America.

(10) The terms of redemption of the bonds.

(d) After giving due consideration to the recommendations of the participating district or districts, the revenue bonds of the authority shall be sold by the Treasurer at either a public or private sale at a price or prices, and upon the terms and conditions prescribed by the authority. The revenue bonds of the authority may be sold at, above, or below the par value of the bonds.

(e) Pending the preparation of the definitive bonds, the authority may issue interim receipts or certificates or temporary bonds which shall be exchanged for the definitive bonds.

(f) Any resolution authorizing the issuance of any bonds of the authority, or any issue of revenue bonds of the authority, may include any of the following provisions:

(1) Provisions pledging all or any part of the proceeds of the bonds or revenue of a project or loan.

(2) Provisions concerning the replacement of mutilated, destroyed, stolen, or lost bonds.

(3) Provisions specifying insurance to be maintained on the project and the authorized uses of the proceeds of the insurance.

(4) Covenants against the mortgaging or otherwise encumbering, selling, leasing, pledging, placing a charge upon, or otherwise disposing of the project prior to the payment of the bonds issued to finance the project.

(5) Provisions specifying the events of default, terms upon which the bonds may be declared due before maturity, and the terms upon which the declaration and its consequences may be waived.

(6) The rights, liabilities, powers, and duties arising upon the breach of any covenants, conditions, or obligations.

(7) Vesting of the right to enforce covenants in a trustee.

(8) The terms upon which all or any percentage of the bondholders may enforce covenants or duties.

(9) Procedures for amending the terms of the resolution, with or without the consent of the holders of a specified number of bonds.

(10) Provision for any other acts or things deemed necessary, convenient, or desirable by the authority to secure the bonds or improve their marketability.

(g) The validity of the authorization and issuance of any bond issue shall not be affected by proceedings for the acquisition, construction, or improvement of any project, or by contracts relating to those proceedings. Any resolution authorizing the issuance of any bonds of the authority may provide authorization for the bonds to bear a statement certifying that they are issued pursuant to this chapter. Bonds bearing that statement shall be conclusively deemed valid and issued in conformity with this chapter. Reference on the face of the bonds to the resolution by its date of adoption shall incorporate the provisions of the resolution and of this chapter into the terms of the bonds.

(h) Members of the authority, or any person executing the revenue bonds of the authority, shall not incur personal liability on the bonds, nor shall these persons incur personal liability or accountability by reason of the issuance of the revenue bonds of the authority.

(i) The authority is authorized, out of any funds available for that purpose, to purchase revenue bonds of the authority. The authority may hold, pledge, cancel, or resell any bonds purchased under the authority of this subdivision, subject to, and in accordance with, agreements with bondholders.

(j) The financing or refinancing of projects or working capital may be provided pursuant to this chapter by means other than revenue bonds, at the discretion of the authority, including financing or refinancing through certificates of participation, or other interests, in bonds, loans, leases, installment sales, or other agreements of the participating district or districts. In this connection, the authority may do all things and execute and deliver all documents and instruments as may be necessary or desirable with regard to issuance of the certificates of participation or other means of financing or refinancing.

(k) The authority may by resolution issue its revenue bonds in the form of commercial paper.

SEC. 49. Section 19116 of the Education Code is amended to read:

19116. (a) Sections 19104 and 19105 are not applicable to the withdrawal of a city or library district from the county free library system in Los Angeles County or Riverside County. The legislative body of any city or the board of trustees of any library district, whose jurisdiction is within the County of Los Angeles or the County of Riverside, may notify the board of supervisors for Los Angeles County or Riverside County, as appropriate, that the city or library district no longer desires to be a part of the county free library system. The notice shall state whether the city or library district intends to acquire property pursuant to subdivision (c). The board of supervisors shall transmit a copy of the notice to the Los Angeles County Assessor or Riverside County Assessor, as appropriate, the Los Angeles County Auditor or Riverside County Auditor, as appropriate, and the State Board of Equalization.

(b) When a city or library district files a notice pursuant to subdivision (a), it shall remain a member of the county free library system until July 1 of the base year or the date on which property is transferred pursuant to subdivision (c), whichever date is later. Upon ceasing to be a member of the county free library system, the city or library district shall not participate in any benefits of the county free library system, and shall assume the responsibility for the provision of library services within its jurisdiction. Unless otherwise agreed by July 1 of the base year in writing by the Board of Supervisors of Los Angeles County or the Board of Supervisors of Riverside County, as appropriate, and the withdrawing city or library district, an amount of property tax revenue equal to the property tax revenues allocated to the county free library pursuant to Article 2 (commencing with Section 96) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code in the fiscal year prior to the base year and that were derived from property situated within the boundaries of the withdrawing entity shall be allocated to and used to maintain library services by the withdrawing entity in the base year and, adjusted forward, in each fiscal year thereafter at the same time allocations are made pursuant to Article 2 (commencing with Section 96) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code. This subdivision shall not apply to property tax revenues that have been pledged to repay bonded indebtedness of the county free library.

(c) If there are one or more county library facilities within the territorial boundaries of the withdrawing entity at the time the withdrawing entity provides notice pursuant to subdivision (a), the withdrawing entity shall have the right to acquire any or all of those facilities from the county and the county shall, no later than July 1 of the base year, transfer to the withdrawing entity each facility to be acquired and the personal property therein related to the provision of library services. If the facility or personal property was purchased with bond proceeds or other forms of indebtedness, acquisition shall only take place if the withdrawing entity assumes any remaining indebtedness and in no way impairs the repayment thereof. If the withdrawing entity opts not to acquire any facilities or personal property, the county at its discretion may dispose of the facilities or personal property or convert the use of those facilities or personal property, including transferring collections and other personal property to other sites and converting facilities to other purposes. If the withdrawing entity opts to acquire any facilities or personal property, the acquisition prices shall be as follows unless otherwise provided for by statute or contract:

(1) Each county library facility which, for the purposes of this section, shall include the real property upon which the facility is located and any fixtures therein and shall not include computer systems and software, shall be transferred for the lesser of:

(A) No cost, if the facility was donated to the county by the withdrawing entity.

(B) The price paid to the withdrawing entity by the county for the facility, if the county bought the facility from the withdrawing entity. However, if the county constructed capital improvements to the facility after it was bought from the withdrawing entity, the county's total out-of-pocket costs for the capital improvement excluding any costs for routine repairs, restoration or maintenance, shall be added to the price.

(C) The fair market value of the facility. However, if any portion of the facility was donated to the county by the withdrawing entity or if any moneys were donated by the withdrawing entity towards the county's construction or acquisition of the facility or any portion thereof, the value of the donation shall be subtracted from the fair market value.

(2) Any personal property within the facility related to the provision of library services, including books and resource materials, computer systems and software, furniture, and furnishings, shall be transferred for the lesser of:

(A) No cost, if the property was donated to the county by the withdrawing entity.

(B) The fair market value of the personal property. However, on or before the March 1 preceding the July 1 of the base year, the county librarian may designate collections of resource books and materials that are unique in, and integral to, the county free library system to be special collections. The special collections shall be acquired by the withdrawing entity only upon mutually agreeable terms and conditions.

(d) If a facility transferred pursuant to subdivision (c) serves residents of surrounding jurisdictions, the board of supervisors governing the county free library system may require, as a condition of transferring the facility, that the library services provided by the withdrawing entity to its residents also be available on the same basis to the residents of the surrounding jurisdictions. However, if the withdrawing entity contributes to the provision of library services from other city funds, or through taxes, assessments, or fees of its residents, the withdrawing entity may provide additional services to its residents. If the requirement to provide regional services is imposed and, unless otherwise agreed in writing by the county and the withdrawing entity by July 1 of the base year, an amount of property tax revenues equal to the property tax revenues derived from property situated in the surrounding jurisdictions which were, in the fiscal year prior to the base year, allocated to the county free library system pursuant to Article 2 (commencing with Section 96) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code shall be allocated to and used to maintain library services by the withdrawing entity in the base year and, adjusted forward, in each fiscal year thereafter at the same time other allocations are made pursuant to Article 2 (commencing with Section 96) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code. This

subdivision shall not apply to property tax revenues that have been pledged to repay bonded indebtedness. If a surrounding jurisdiction subsequently provides notice of its intent to withdraw from the county free library system pursuant to subdivision (a), on the date the surrounding jurisdiction ceases to participate in the benefits of the county free library system pursuant to subdivision (b), the withdrawing entity shall no longer be required to make library services available to the residents of the surrounding jurisdiction and property tax revenues derived from property situated in the surrounding jurisdiction shall no longer be allocated to the withdrawing entity pursuant to this subdivision.

(e) For purposes of this section, the following terms are defined as follows:

(1) "Base year" means the fiscal year commencing on the July 1 following the December 2 following the date of the notice given pursuant to subdivision (a) of this section.

(2) "Fair market value" means:

(A) Any value agreed upon by the withdrawing entity and the county.

(B) If no agreement as to value is reached by the March 1 preceding the July 1 of the base year, the value assigned by an appraiser agreed upon by the withdrawing entity and the county.

(C) If no agreement as to the appointment of an appraiser is reached pursuant to subparagraph (B) by the April 1 preceding the July 1 of the base year, the value assigned by an appraiser agreed upon between the withdrawing entity's appraiser and the county's appraiser.

(D) If no agreement as to the appointment of an appraiser is reached pursuant to subparagraph (C) by the May 1 preceding the July 1 of the base year, the value assigned by a state certified appraiser designated by the withdrawing entity. The designated appraiser shall provide the appraisal in writing to the county no later than the June 1 preceding the July 1 of the base year.

(E) The withdrawing entity shall reimburse the county for any appraisal costs the county incurs in determining the fair market value pursuant to this section.

(3) "Surrounding jurisdictions" means cities and library districts that are adjacent to the withdrawing entity and tax rate areas in unincorporated areas of the county which tax rate areas are wholly or partially within the withdrawing entity's sphere of influence, which cities, libraries, and tax rate areas are within the county free library system and have no facility within their territorial boundaries providing library services at the time the withdrawing entity provides notice pursuant to subdivision (a).

SEC. 50. Section 27405 of the Education Code is amended to read:

27405. Upon the legal separation or dissolution of marriage of a participant, the court may include in the judgment or court order a determination of the community property rights of the parties in the

participant's annuity consistent with this section. Upon election under subparagraph (B) of paragraph (3) of subdivision (a) of Section 2610 of the Family Code, the court order awarding the nonparticipant spouse a community property share in the benefits of a participant receiving an annuity shall be consistent with this section.

(a) If the court does not award the entire annuity to the participant and the participant is receiving an annuity under paragraph (1) or (2) of subdivision (b) of Section 26807, the court shall require only that the system pay from the plan the nonparticipant spouse, by separate warrant, his or her community property share of the participant's annuity, or the option beneficiary's annuity or both.

(b) The nonparticipant spouse may designate a beneficiary to receive his or her community property share of the participant's annuity.

SEC. 51. Section 44279.7 of the Education Code is amended to read:

44279.7. (a) The superintendent and the commission shall award supplemental grants on a competitive basis to Beginning Teacher Support and Assessment System teacher induction programs established pursuant to Section 44279.2 that are identified as having expertise according to criteria established by the superintendent and the commission. The supplemental grants received pursuant to this section shall be expended to assist clusters of teacher induction programs operated by school districts or consortiums of school districts.

(b) The superintendent and the commission shall designate each school district and consortium of school districts participating in the Beginning Teacher Support and Assessment System established pursuant to Section 44279.2 as belonging to a cluster according to the criteria established pursuant to this subdivision. For the purposes of this section "cluster" means a cluster of school districts or consortium of school districts established pursuant this section. The superintendent and the commission shall establish criteria for the formation of school districts or consortiums of school district teacher induction program clusters based upon, but not necessarily be limited to, all of the following:

(1) Geographic proximity.

(2) Program size.

(3) The number of beginning teachers served.

(4) The similarity of teacher characteristics and pupil populations in each school district.

(c) School districts and consortiums of school districts awarded supplemental grants pursuant to this section shall identify a teacher induction program consultant to assist the school district or consortiums of school districts forming a cluster. The superintendent and the commission shall identify the purpose and functions of each

consultant. Those purposes and functions shall include, but not necessarily be limited to, all the following:

(1) Assisting in designing, implementing, refining, and evaluating their teacher induction programs.

(2) Assisting in building the capacity to provide professional development for all personnel involved in the implementation of teacher induction programs, including, but not limited to, beginning teachers, support providers, and administrators.

(3) Disseminating information on teacher induction programs to all interested participants within the cluster and collaborating with other consultants statewide and with state administrative agency staff to ensure ongoing program improvement.

(d) The superintendent and the commission shall ensure that each grant awarded pursuant to this section supports the salary and benefits and other related costs based on the prorated amount of time dedicated to this function for a consultant to assist each cluster.

SEC. 52. Section 44306 of the Education Code is amended to read:

44306. The commission shall submit an interim report to the Legislature and the Legislative Analyst no later than October 1, 2000, and a final report no later than October 1, 2001, to include the following information regarding the Pre-Internship Teaching Program:

(a) The number of participating school districts and pre-intern teachers served.

(b) The impact of the program on decreasing the number of emergency permits issued.

(c) The retention rates of pre-intern teachers, as compared to the retention rates of emergency permitholders.

(d) The success rates of pre-intern teachers, by year of participation in the program, in meeting requirements for subject matter knowledge required by law.

(e) Assessments by pre-interns of the effectiveness of the pre-intern preparation, support and assistance provided.

(f) A description of in-kind contributions to the pre-intern teaching program provided by participating school districts.

(g) Recommendations regarding whether the Pre-Internship Teaching Program should be continued, modified, or discontinued, including reasons for those recommendations.

SEC. 53. Section 44308 of the Education Code is amended to read:

44308. (a) Funding for the purposes of administering the program established pursuant to this article is contingent upon an appropriation in the Budget Act or other act.

(b) It is the intent of the Legislature that federal funding provided to the State Department of Education and the Commission on Teacher Credentialing in Item 6110-001-0890 and Item 6360-001-0407 be adjusted to provide direct funding for the Commission on Teacher Credentialing for the purposes of the Pre-Internship Teaching Program and the California Paraprofessional Teacher Training

Program. The Department of Finance shall make those adjustments using authority of Section 1.50 of the Budget Act of 1997.

(c) If funds are provided for this act from the federal Goals 2000: Educate America Act (P.L. 103-227) and if the provisions of this article do not meet the requirements of that federal act, the State Department of Education shall be held harmless for any fiscal penalty exacted by the federal government for the expenditures made by local education agencies or for state operations.

SEC. 54. Section 44759.4 of the Education Code is amended to read:

44759.4. The Superintendent of Public Instruction shall administer the grant application process. School district applications shall include the following:

(a) Certification by the governing board of the school district that the requirements of Section 44759 or 44759.2, or both as appropriate, and Section 44759.3 shall be met.

(b) A description of how the school district shall address the following:

(1) Augmentation of resources for reading instruction staff development through the use of staff development days authorized pursuant to Section 44670.6.

(2) Augmentation of resources for reading instruction staff development through the use of funds available from other state and federal sources.

(3) Augmentation of resources for reading instruction staff development through the use of training provided by publishers that address the subjects contained in subdivision (e) of Section 44759.

(4) Involvement of the parents and guardians of pupils enrolled in the school district.

(5) Ensuring that teachers are provided time to collaborate, discuss, and reflect on, and to the degree possible, be coached on, the classroom implementation of what has been provided in staff development sessions.

(6) Ensuring that implementation of training and pupil results relative to grade-level standards in reading are monitored to ensure a positive impact of the training.

SEC. 55. Section 52122 of the Education Code is amended to read:

52122. (a) Except as otherwise provided by Section 52123, any school district that maintains any kindergarten or any of grades 1 to 3, inclusive, may apply to the Superintendent of Public Instruction for an apportionment to implement a class size reduction program in that school district in kindergarten and any of the grades designated in this chapter.

(b) An application submitted pursuant to this chapter shall identify both of the following:

(1) Each class that will participate in the Class Size Reduction Program.

(2) For each class that will participate in the Class Size Reduction Program, whether that class will operate under Option One or Option Two:

(A) (i) Option One: A school district shall provide a reduced class size for all pupils in each classroom for the full regular schoolday in each grade level for which funding is claimed. For the purposes of this chapter, "full regular schoolday" means a substantial majority of the instructional minutes per day, but shall permit limited periods of time during which pupils are brought together for a particular phase of education in groups that are larger than 20 pupils per certificated teacher. It is the intent of the Legislature that those limited periods of time be kept to a minimum and that instruction in reading and mathematics not be delivered during those limited periods of time. For the purposes of this subparagraph, "class" shall be defined in the same manner as provided in the regulations adopted by the Superintendent of Public Instruction prior to July 1, 1996, pursuant to Sections 41376 and 41378 (subdivision (a) of Section 15103 of Title 5 of the California Code of Regulations).

(ii) The purpose of the Class Size Reduction Program is to ensure that children in public school in kindergarten and grades 1 to 3, inclusive, receive instruction in classrooms where there are not more than 20 students. In order to qualify for funding pursuant to this chapter, each class in the Class Size Reduction Program shall be maintained with an annual average class size of not more than 20 pupils for the instructional time which qualifies the class for funding pursuant to this chapter. Nothing in this chapter shall be construed to prohibit the class size from exceeding 20 pupils on any particular day, provided the average class size for the school year does not exceed 20.

(B) (i) Option Two: A school district shall provide a reduced class size for all pupils in each classroom for at least one-half of the instructional minutes offered per day in each grade level for which funding is claimed. School districts selecting this option shall primarily devote those instructional minutes to the subject areas of reading and mathematics. For the purposes of this subparagraph, "class" shall be defined in the same manner as provided in the regulations adopted by the Superintendent of Public Instruction prior to July 1, 1996, pursuant to Sections 41376 and 41378 (subdivision (a) of Section 15103 of Title 5 of the California Code of Regulations).

(ii) The purpose of the Class Size Reduction Program is to ensure that children in public school in kindergarten and grades 1 to 3, inclusive, receive instruction in classrooms where there are not more than 20 students. In order to qualify for funding pursuant to this chapter, each class in the Class Size Reduction Program shall be maintained with an annual average class size of not more than 20 pupils for the instructional time which qualifies the class for funding pursuant to this chapter. Nothing in this chapter shall be construed to prohibit the class size from exceeding 20 pupils on any particular

day, provided the average class size for the school year does not exceed 20.

(c) A school district that intends to implement a Class Size Reduction Program for the 1996–97 school year shall submit an application for funds pursuant to this chapter to the Superintendent of Public Instruction not later than November 1, 1996. To receive the total amount of funding in the 1996–97 school year for which the school district is eligible pursuant to Section 52126, a school district shall implement the Class Size Reduction Program by February 16, 1997, within the meaning of paragraph (2) of subdivision (b).

(d) A school district that intends to implement or continue to implement a Class Size Reduction Program for the 1997–98 school year and any subsequent school year shall submit an application for funding pursuant to this chapter to the Superintendent of Public Instruction not later than 90 days after the annual Budget Act is chaptered, unless otherwise specified in regulations adopted by the State Board of Education.

(e) For the 1997–98 school year, a school district that is either implementing or expanding a class size reduction program pursuant to this chapter may receive funding pursuant to this chapter even if the new classes for which funding is sought are not implemented at the beginning of the 1997–98 school year, provided that, for each new class in the Class Size Reduction Program, all of the following criteria are met:

(1) The teacher for each new class is hired and placed on the school district's payroll by November 1, 1997.

(2) Each teacher for a new class has begun to receive the training required by this chapter on or before February 16, 1998.

(3) All other requirements of this chapter are satisfied by February 16, 1998, and continue to be satisfied for the remainder of the 1997–98 school year.

(f) For the 1997–98 school year, the number of new classes in the Class Size Reduction Program is the number of classes satisfying the requirements of this chapter minus the number of classes funded in the Class Size Reduction Program pursuant to this chapter in the 1996–97 school year.

(g) Any school district that chooses to reduce class size through the use of an early-late instructional program is ineligible to also use Section 46205, relating to the computation of instructional time for purposes of the Incentive for Longer Instructional Day and Year, in any grade level for which class size reduction funding is received pursuant to this chapter; provided, however, that any school district that operated under Section 46205 prior to July 1, 1996, may receive class size reduction funding pursuant to Option One in any grade level for which class size reduction funding would otherwise be received pursuant to Option One.

SEC. 56. Section 52122.1 of the Education Code is amended to read:

52122.1. (a) A school district applying to implement the Class Size Reduction Program in additional classes in the 1997–98 school year may request that a portion of the maximum operating funds for which the school district would be eligible if fully reducing class size in kindergarten and in grades 1 to 3, inclusive, pursuant to the provisions of subparagraph (A) of paragraph (2) of subdivision (b) of Section 52122, be used for facilities-related costs necessary for new classes established under this program beyond those established in the 1996–97 school year.

(b) An application made pursuant to this section, the form of which shall be developed by the Superintendent of Public Instruction not later than 30 days after the Budget Act of 1997 is chaptered, shall be submitted by each school district that elects to apply for funding under this section not later than 90 days after the Budget Act of 1997 is chaptered, and shall include certification by the governing board of the school district that, in the 1997–98 school year, the school district can show one of the following:

(1) In the 1996–97 fiscal year, the school district received funding for the Class Size Reduction Facilities Funding Program pursuant to Chapter 19 (commencing with Section 17200) of Part 10.

(2) 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) of Part 10) on a districtwide basis or for the relevant school attendance area, as defined in Section 17041.

(3) The school district has insufficient classroom 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 this chapter, as demonstrated through the eligibility calculation specified in Section 17203 that shall be certified by the governing board of the school district, adjusted to exclude new teaching stations established in the 1996–97 school year for this program.

(c) School districts requesting funds for facilities pursuant to this section are eligible to receive forty thousand dollars ($40,000) for each new teaching station that is needed to be established for the purpose of expanding the Class Size Reduction Program in the 1997–98 school year beyond the number of new classes established in the 1996–97 school year pursuant to the provisions of subparagraph (A) of paragraph (2) of subdivision (b) of Section 52122.

(1) The maximum amount of funds a school district may receive for both operation funds, pursuant to subparagraphs (A) and (B) of paragraph (2) of subdivision (b) of Section 52122, and facility funds provided by this section, is limited to the number of pupils in kindergarten through grades 1 to 3, inclusive, multiplied by the Option One stipend specified in Section 52126.

(2) The maximum initial apportionment for facilities-related costs available to a school district under this section shall be calculated as follows:

(A) Multiply the district's certified enrollment in kindergarten and grades 1 to 3, inclusive, as of October of the previous school year by the per pupil stipend for the 1997–98 school year established in subdivision (a) of Section 52126.

(B) Subtract from the amount determined in subparagraph (A) the product of the number of pupils the district certifies will be in a class which satisfies the provisions of subparagraph (A) of paragraph (2) of subdivision (b) of Section 52122 during the 1997–98 school year times the per pupil stipend for the 1997–98 school year in subdivisions (a) and (c) of Section 52126.

(C) Subtract from the amount determined in subparagraph (B) the product of the number of pupils the district certifies will be in a class which satisfies the provisions of subparagraph (B) of paragraph (2) of subdivision (b) of Section 52122 during the 1997–98 school year times the per pupil stipend for the 1997–98 school year in subdivisions (b) and (d) of Section 52126.

(D) In no case shall a district receive facilities funding of more than forty thousand dollars ($40,000) per new class that is needed to expand the Class Size Reduction Program during the 1997–98 school year.

(3) If, by June 30, 1998, or by a later date specified in a statute, the State Department of Education determines that the school district was eligible to receive facilities grants in excess of the number of facilities grants actually received in the 1997–98 school year, the department may award additional grants to the school district, to the extent that the funds are available for this purpose. To determine if funds are available to a school district for this purpose, the department shall use the calculations in subparagraphs (A) to (D), inclusive, of paragraph (2), but adjusted for actual implementation of the Class Size Reduction Program and yearend enrollment.

(d) The funds allocated pursuant to this section shall be considered to be a loan to the school district receiving the funds. The following loan repayment provisions shall apply to all allocations made pursuant to this section:

(1) If the school district is eligible to receive grants pursuant to the provisions of subparagraph (A) of paragraph (2) of subdivision (b) of Section 52122 for the 1997–98 school year and has satisfied all requirements to receive these funds in the 1997–98 school year, for all classes for which it received facilities funding pursuant to this section, as determined by the State Department of Education, the school district shall not be required to repay the loan.

(2) If a school district receives funding pursuant to this section, but has not satisfied the requirements of paragraph (1) for all classes for which it received facilities funds, the Superintendent of Public Instruction shall notify the Controller and school district in writing,

and the Controller shall deduct an amount equal to the portion of the total loan amount received by the school district under this subdivision for the classes that the school district failed to reduce the size to 20 or fewer pupils pursuant to the provisions of subparagraph (A) of paragraph (2) of subdivision (b) of Section 52122, from the school district's next principal apportionment or apportionments of state funds to the school district, other than basic aid apportionments required by Section 6 of Article IX of the California Constitution.

(e) Funds allocated to school districts pursuant to this section shall be expended solely for the purpose of facilities-related costs associated with the implementation of the Class Size Reduction Program contained in this chapter.

(f) Funds shall not be allocated to school districts pursuant to this section for the purpose of assisting school districts in implementing Option Two, as set forth in paragraph (2) of subdivision (b) of Section 52122.

(g) Nothing in this section shall be construed as precluding school districts from fully implementing class size reduction in kindergarten and grades 1 to 3, inclusive.

(h) It is the intent of the Legislature that, for each new teaching station a school district establishes for the purpose of class size reduction for which the school district did not receive a facilities grant under this section or any previous appropriation for this purpose, the school district shall be eligible for facilities funding from any state general obligation bond measure approved for that purpose.

(i) For purposes of this section, any reference to school districts shall be deemed to include any charter school.

SEC. 57. Section 52124 of the Education Code is amended to read:

52124. (a) Any school district that implements a Class Size Reduction Program pursuant to this chapter is subject to this section.

(b) A school district may establish a program to reduce class size in kindergarten and grades 1 to 3, inclusive, and that program shall be implemented at each schoolsite according to the following priorities:

(1) If only one grade level is reduced at a schoolsite, the grade level shall be grade 1.

(2) If only two grade levels are reduced at a schoolsite, the grade levels shall be grades 1 and 2.

(3) If three grade levels are reduced at a schoolsite, then those grade levels shall be kindergarten and grades 1 and 2 or grades 1 to 3, inclusive. Priority shall be given to the reduction of class sizes in grades 1 and 2 before the class sizes of kindergarten or grade 3 are reduced.

(4) If four grade levels are reduced at a schoolsite, then those grade levels shall be kindergarten and grades 1 to 3, inclusive. First priority shall be given to the reduction of class sizes in grades 1 and 2, second priority shall be given to the reduction of class size in

kindergarten and grade 3. This paragraph shall be operative only in those fiscal years for which funds are appropriated expressly for the purposes of this paragraph.

(c) It is the intent of the Legislature to continue to permit the use of combination classes of more than one grade level to the extent that school districts are otherwise permitted to use that instructional strategy. However, any school district that uses a combination class in any class for which funding is received pursuant to this chapter may not claim funding pursuant to this chapter if the total number of pupils in the combination class, regardless of grade level, exceeds 20 pupils per certificated teacher assigned to provide direct instructional services.

(d) The governing board of a school district shall certify to the Superintendent of Public Instruction that it has met the requirements of this section in implementing its Class Size Reduction Program. 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.

SEC. 58. Section 52181 of the Education Code is amended to read:

52181. The State Bilingual Teacher Training Assistance Program is hereby established for teachers who are granted waivers under Section 52178 and who are enrolled and participating in a program leading to a bilingual specialist credential or a certificate of competence for bilingual-crosscultural competence. The program shall be administered by the State Department of Education which shall, in consultation with the Commission on Teacher Credentialing and representatives of bilingual educators from institutions of higher education, county offices of education, and school districts, develop annual and long-range goals and objectives for the program, based upon the reports required under subparagraph (B) of paragraph (2) of subdivision (a) of Section 52171.6 and under Section 52178.

SEC. 59. Section 52183 of the Education Code is amended to read:

52183. The department shall establish minimum requirements for teachers who may wish to participate in the program, including, but not limited to, the following requirements:

(a) That the teacher is working in a bilingual classroom serving pupils of limited-English-proficiency and is under a bilingual teacher waiver issued pursuant to Section 52178.

(b) That the teacher's waiver application includes a certification by an assessor agency approved by the Commission on Teacher Preparation and Licensing issued pursuant to Section 52178.

(c) That the teacher is enrolled and participating in a program leading to a bilingual specialist credential or a certificate of competence for bilingual-crosscultural instruction pursuant to Section 44253.5.

(d) That the teacher demonstrates the ability and commitment to meet the requirements of the certificate of competence within the time period specified in Section 52178.

SEC. 60. Section 60640 of the Education Code is amended to read:

60640. (a) There is hereby established the Standardized Testing and Reporting Program, to be known as the STAR Program.

(b) Commencing in the 1997–98 fiscal year and each fiscal year thereafter, and from the funds available for that purpose, each school district, charter school, and county office of education shall administer to each of its pupils in grades 2 to 11, inclusive, before May 15, the achievement test designated by the State Board of Education pursuant to Section 60642.

(c) The publisher and the school district shall provide two makeup days for the testing of previously absent pupils no later than May 25.

(d) The governing board of the school district may administer achievement tests in kindergarten, and grade 1 or 12, or both, as it deems appropriate.

(e) Individuals with exceptional needs who have an explicit provision in their individualized education program that exempts them from the testing requirement of subdivision (b) shall be so exempt.

(f) At the school district's option, pupils of limited English proficiency who are enrolled in any of grades 2 to 11, inclusive, may take a second achievement test in their primary language.

(g) In addition to the test required by subdivision (b), pupils of limited English proficiency who are enrolled in any of grades 2 to 11, inclusive, shall be required to take a test in their primary language if that test is available, if less than 12 months have elapsed after their initial enrollment in any public school in the state.

(h) The Superintendent of Public Instruction shall apportion funds to enable school districts to meet the requirements of subdivisions (b), (f), and (g). The State Board of Education shall establish the amount of funding to be apportioned. The amount to be apportioned shall be up to eight dollars ($8) per test administered to a pupil in grades 2 to 11, inclusive.

(i) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation for the apportionments made pursuant to subdivision (g) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the applicable 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 that fiscal year.

(j) As a condition to receiving an apportionment pursuant to subdivision (h), a school district shall report to the superintendent all of the following:

(1) The number of pupils enrolled in the school district in grades 2 to 11, inclusive.

(2) The number of pupils to whom an achievement test was administered in grades 2 to 11, inclusive, in the school district.

(3) The number of pupils in paragraph (1) who were exempted from the test pursuant to subdivision (e).

(4) The number of pupils in paragraph (1) who were exempted from the test at the request of their parents or guardians.

SEC. 61. Section 69621 of the Education Code is amended to read:

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.

SEC. 62. Section 69629 of the Education Code is amended to read:

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. 63. Section 89010 of the Education Code is amended to read:

89010. (a) Notwithstanding Article 1 (commencing with Section 11000) of Chapter 1 of Part 1, Article 2 (commencing with Section 14660) of Chapter 2 of Part 5.5, and Part 11 (commencing with Section 15850), of Division 3 of Title 2 of the Government Code, or any other provision of law to the contrary, the trustees may sell improvements located on the land at the California State University, Monterey Bay campus that was transferred to the trustees from the United States of America and used for housing purposes, in circumstances in which the underlying ownership in the land remains in the trustees. The trustees may exercise this authority without the prior approval of any other state department or agency.

(b) Moneys received by the trustees from the sale of improvements authorized in this section shall be deposited in local trust accounts. Moneys so deposited may be invested in accordance with state law and, notwithstanding Section 13340, are continuously appropriated without regard to fiscal years for the purposes of building, maintaining, and funding a campus of the California State University at Monterey Bay through expenditures for improvements to the campus, funding of scholarships, and other academic purposes of the campus.

SEC. 64. Section 3030 of the Family Code is amended to read:

3030. (a) No person shall be granted custody of, or unsupervised visitation with, a child if the person is required to be registered as a sex offender under Section 290 of the Penal Code and the victim of the offense was a minor, or if the person has been convicted under Section 273a, 273d, or 647.6 of the Penal Code, unless the court finds that there is no significant risk to the child.

(b) No person shall be granted custody of, or visitation with, a child if the person has been convicted under Section 261 of the Penal Code and the child was conceived as a result of that violation.

(c) The court may order child support that is to be paid by a person subject to subdivision (a) or (b) to be paid through the district attorney's office, as authorized by Section 4573 of this code and Section 11475.1 of the Welfare and Institutions Code.

(d) The court shall not disclose, or cause to be disclosed, the custodial parent's place of residence, place of employment, or the child's school, unless the court finds that the disclosure would be in the best interests of the child.

SEC. 65. Section 4901 of the Family Code is amended to read:

4901. As used in this chapter, the following definitions shall apply:

(1) "Child" means an individual, whether over or under the age of majority, who is, or is alleged to be, owed a duty of support by the individual's parent or who is, or is alleged to be, the beneficiary of a support order directed to the parent.

(2) "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

(3) "Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

(4) "Home state" means the state in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

(5) "Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the laws of this state.

(6) "Income-withholding order" means an earnings assignment order for support, as defined in Section 5208, or any other order or other legal process directed to an obligor's employer, or other debtor, to withhold from the income of the obligor an amount owed for support.

(7) "Initiating state" means a state from which a proceeding is forwarded, or in which a proceeding is filed for forwarding, to a responding state under this chapter or a law or procedure substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

(8) "Initiating tribunal" means the authorized tribunal in an initiating state.

(9) "Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage.

(10) "Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining parentage.

(11) "Law" includes decisional and statutory law and rules and regulations having the force of law.

(12) "Obligee" means any of the following:

(i) An individual to whom a duty of support is, or is alleged to be, owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered.

(ii) A state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on its provision of financial assistance to an individual obligee.

(iii) An individual seeking a judgment determining parentage of the individual's child.

(13) "Obligor" means an individual, or the estate of a decedent, that satisfies any of the following criteria:

(i) He or she owes or is alleged to owe a duty of support.

(ii) He or she is alleged but has not been adjudicated to be a parent of a child.

(iii) He or she is liable under a support order.

(14) "Register" means to file a support order or judgment determining parentage in the superior court in any county in which enforcement of the order is sought.

(15) "Registering tribunal" means a tribunal in which a support order is registered.

(16) "Responding state" means a state in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under this chapter or a law or procedure substantially similar to this chapter, the Uniform Reciprocal Enforcement of

Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

(17) "Responding tribunal" means the authorized tribunal in a responding state.

(18) "Spousal support order" means a support order for a spouse or former spouse of the obligor.

(19) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term "state" also includes both of the following:

(i) An Indian tribe.

(ii) A foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

(20) "Support enforcement agency" means a public official or agency authorized to seek any of the following:

(i) Enforcement of support orders or laws relating to the duty of support.

(ii) Establishment or modification of child support.

(iii) Determination of parentage.

(iv) To locate obligors or their assets.

(21) "Support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, for the benefit of a child, spouse, or former spouse, that provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney's fees, or other relief.

(22) "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.

SEC. 66. Section 7552 of the Family Code is amended to read:

7552. The genetic tests shall be performed by a laboratory approved by any accreditation body that has been approved by the United States Secretary 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. 67. 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 in which 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 Registrar of Vital Statistics, 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 Registrar of Vital Statistics 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 shall ensure that the form is witnessed and forwarded to the State Registrar of Vital Statistics.

(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 Registrar of Vital 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 Registrar of Vital 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 Registrar of Vital 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. 68. 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 that shall be attached to the form specified in Section 7574 and provided to unmarried parents shall contain all of the following information:

(1) A signed voluntary declaration of paternity that is filed with the State Registrar of Vital 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 receive 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 also shall 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. 69. 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 Registrar of Vital Statistics 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 instructions on how to complete and file the rescission with the State Registrar of Vital Statistics. 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 Registrar of Vital Statistics. 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 of paternity 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 based upon an act of fraud or perjury, the act must have induced the 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 to file the action or motion to set aside the voluntary declaration of

paternity 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 restricts 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. 70. Section 1505 of the Financial Code is amended to read:

1505. The Legislature finds and declares that it is important to inform taxpayers that they may make voluntary contributions to certain funds or programs, as provided on the state income tax return. The Legislature further finds and declares that many taxpayers remain unaware of the voluntary contribution check-offs on the state income tax return. Therefore, it is the intent of the Legislature to encourage all persons who prepare state income tax returns to inform their clients in writing, prior to the completion of any tax return, that they may make a contribution to any voluntary contribution check-off on the state income tax return if they so choose.

SEC. 71. Section 13081 of the Financial Code is amended 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 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.

SEC. 72. Section 22050 of the Financial Code is amended to read:

22050. (a) This division does not apply to any person doing business under any law of this state or of the United States relating to banks, trust companies, savings and loan associations, industrial loan companies, credit unions, small business investment companies, California business and industrial development corporations, or licensed pawnbrokers.

(b) This division does not apply to a broker-dealer acting pursuant to a certificate, then in effect, issued pursuant to Section 25211 of the Corporations Code.

(c) This division does not apply to a college or university making a loan for the purpose of permitting a person to pursue a program or course of study leading to a degree or certificate.

(d) This division does not apply to a check casher who holds a valid permit issued pursuant to Section 1789.37 of the Civil Code when acting under the authority of that permit.

(e) This division does not apply to any person who makes no more than one loan in a 12-month period as long as that loan is a commercial loan as defined in Section 22502.

SEC. 73. Section 1348.2 of the Fish and Game Code is amended to read:

1348.2. When the board acquires real property, other than by eminent domain, the purchase price for the real property shall not

exceed the fair market value of the property, as defined in Section 1263.320 of the Code of Civil Procedure. The fair market value shall be set forth in an appraisal that is (a) prepared by a licensed real estate appraiser, and (b) approved by the Department of General Services.

SEC. 74. Section 2052.1 of the Fish and Game Code is amended to read:

2052.1. The Legislature further finds and declares that if any provision of this chapter requires a person to provide mitigation measures or alternatives to address a particular impact on a candidate species, threatened species, or endangered species, the measures or alternatives required shall be roughly proportional in extent to any impact on those species that is caused by that person. Where various measures or alternatives are available to meet this obligation, the measures or alternatives required shall maintain the person's objectives to the greatest extent possible consistent with this section. All required measures or alternatives shall be capable of successful implementation. This section governs the full extent of mitigation measures or alternatives that may be imposed on a person pursuant to this chapter. This section shall not affect the state's obligations set forth in Section 2052.

SEC. 75. Section 4600 of the Fish and Game Code is amended to read:

4600. It is unlawful to kill, wound, capture, or have in possession any undomesticated burro.

An undomesticated burro is a wild burro or a burro which has not been tamed or domesticated for a period of three years after its capture. The fact that a burro was killed, wounded, or captured on publicly owned land, or on land owned by a person other than the person who killed, wounded, or captured the burro is prima facie evidence that the burro was an undomesticated burro at the time it was killed, wounded, or captured.

Neither the commission nor any other department or agency has any power to modify the provisions of this section by any order, rule, or regulation.

SEC. 76. Section 4606 of the Fish and Game Code is repealed.

SEC. 77. Section 7151 of the Fish and Game Code is amended to read:

7151. (a) Upon application to the department, the following persons, who have not been convicted of any violation of this code, shall be issued, free of any charge or fee, a free sportfishing license, which is valid for the calendar year of issue or, if issued after the beginning of the year, for the remainder thereof, and which authorizes the licensee to take any fish, reptile, or amphibia anywhere in this state for purposes other than profit:

(1) A blind person upon presentation of proof of blindness. "Blind person" means a person with central vision acuity of 20/200 or less in the better eye, with the aid of the best possible correcting glasses,

or central visual acuity better than 20/200 if the widest diameter of the remaining visual field is no greater than 20 degrees. Proof of blindness shall be by certification from a qualified licensed optometrist or ophthalmologist or by presentation of a license issued pursuant to this paragraph in the preceding license year.

(2) Every resident Native American who, in the discretion of the department, is financially unable to pay the fee required for the license.

(3) Upon certification by the person in charge of a state hospital, a person who is a ward of the state and who is a patient in, and resides in, the state hospital.

(4) Upon certification by the person in charge of the regional center for the developmentally disabled, a developmentally disabled person receiving services from the regional center.

(5) A person who is a resident of the state and who is so severely physically disabled as to be permanently unable to move from place to place without the aid of a wheelchair, walker, forearm crutches, or a comparable mobility-related device. Proof of the disability shall be by certification from a licensed physician and surgeon or, beginning January 1, 1997, by presentation of a license issued pursuant to this paragraph for the preceding year.

(b) Upon application to the department, the department may issue, free of any charge or fee, a sportfishing permit to fish to groups of mentally or physically handicapped persons under the care of a certified federal, state, county, city, or private licensed care center, as set forth in Section 1502 of the Health and Safety Code, to organizations exempt from taxation under Section 501(c)(3) of the federal Internal Revenue Code, or to schools or school districts. Any organization that applies for a group fishing permit shall provide evidence that it is a legitimate private licensed care center, tax-exempt organization, school, or school district. The permit shall be issued to the person in charge of the group and shall be in his or her possession when the group is fishing. Employees of private licensed care centers, tax-exempt organizations, schools, or school districts are exempt from Section 7145 only while assisting physically or mentally disabled persons fishing under the authority of a valid permit issued pursuant to this section. The permit shall include the location where the activity will take place, the date or dates of the activity, and the maximum number of people in the group. The permitholder shall notify the local department office before fishing and indicate where, when, and how long the group will fish.

(c) On January 15 of each year, the department shall determine the number of free sportfishing licenses issued under subdivisions (a) and (b) to blind persons, indigent resident Native Americans, wards of the state, developmentally disabled persons, and physically disabled persons.

(d) There shall be appropriated from the General Fund a sum equal to two dollars ($2) per free sportfishing license issued under

subdivisions (a) and (b), as determined by the department pursuant to subdivision (c). That sum may be appropriated annually in the Budget Act for transfer to the Fish and Game Preservation Fund and appropriated in the Budget Act from the Fish and Game Preservation Fund to the department for the purposes of this part.

SEC. 78. The heading of Article 2 (commencing with Section 11241) of Chapter 2 of Part 4 of Division 5 of the Food and Agricultural Code is repealed.

SEC. 79. Section 12803 of the Food and Agricultural Code is amended to read:

12803. The director, by regulation, may exempt from all or part of the requirements of this division a pesticide exempted pursuant to Section 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.

SEC. 80. The heading of Chapter 4 (commencing with Section 16701) of Part 1 of Division 9 of the Food and Agricultural Code is repealed.

SEC. 81. The heading of Chapter 5 (commencing with Section 16801) of Part 1 of Division 9 of the Food and Agricultural Code is repealed.

SEC. 82. The heading of Article 5 of Chapter 8 of Part 3 of Division 15 of the Food and Agricultural Code is repealed.

SEC. 83. 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, that 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 agreements 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 health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.

SEC. 84. Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code, as added by Chapter 953 of the Statutes of 1997, is repealed.

SEC. 85. Section 12940 of the Government Code is amended to read:

12940. It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

(1) Nothing in this part shall prohibit an employer from refusing to hire or discharging an employee with a physical or mental disability, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee with a physical or mental disability, where the employee, because of his or her physical or mental disability, is unable to perform his or her essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger his or her health or safety or the health and safety of others even with reasonable accommodations.

(2) Nothing in this part shall prohibit an employer from refusing to hire or discharging an employee who, because of the employee's medical condition, is unable to perform his or her essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations. Nothing in this part shall subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee who, because of the employee's medical condition, is unable to perform his or her essential duties, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations.

(3) Nothing in this part relating to discrimination on account of marital status shall do either of the following:

(A) Affect the right of an employer to reasonably regulate, for reasons of supervision, safety, security, or morale, the working of spouses in the same department, division, or facility, consistent with the rules and regulations adopted by the commission.

(B) Prohibit bona fide health plans from providing additional or greater benefits to employees with dependents than to those employees without or with fewer dependents.

(4) Nothing in this part relating to discrimination on account of sex shall affect the right of an employer to use veteran status as a factor in employee selection or to give special consideration to Vietnam era veterans.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of any person, to exclude, expel or restrict from its membership the person, or to provide only second-class or segregated membership or to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of the person in the election of officers of the labor organization or in the selection of the labor organization's staff or to discriminate in any way against any of its members or against any employer or against any person employed by an employer.

(c) For any person to discriminate against any person in the selection or training of that person in any apprenticeship training program or any other training program leading to employment because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of the person discriminated against.

(d) For any employer or employment agency, unless specifically acting in accordance with federal equal employment opportunity guidelines and regulations approved by the commission, to print or circulate or cause to be printed or circulated any publication, or to make any non-job-related inquiry, either verbal or through use of an application form, which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex, or any intent to make that limitation, specification or discrimination. Except as provided in the Americans with Disabilities Act of 1990 (Public Law 101-336) and the regulations adopted pursuant thereto, nothing in this subdivision shall prohibit any employer from making, in connection with prospective employment, an inquiry as to, or a request for information regarding, the physical fitness, medical condition, physical condition, or medical history of applicants if that inquiry or request for information is directly related and pertinent to the position the applicant is applying for or directly related to a

determination of whether the applicant would endanger his or her health or safety or the health or safety of others.

(e) For any employer, labor organization, or employment agency to harass, discharge, expel, or otherwise discriminate against any person because the person has made a report pursuant to Section 11161.8 of the Penal Code, which prohibits retaliation against hospital employees who report suspected patient abuse by health facilities or community care facilities.

(f) For any employer, labor organization, employment agency, or person to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part.

(g) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this part, or to attempt to do so.

(h) (1) For an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment, or any other person, because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or age, to harass an employee or applicant. Harassment of an employee or applicant by an employee other than an agent or supervisor shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action. An entity shall take all reasonable steps to prevent harassment from occurring. Loss of tangible job benefits shall not be necessary in order to establish harassment.

(2) This subdivision is declaratory of existing law, except for the new duties imposed on employers with regard to harassment.

(3) (A) For purposes of this subdivision only, "employer" means any person regularly employing one or more persons, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision thereof, and cities.

(B) Notwithstanding subparagraph (A), for purposes of this subdivision, "employer" does not include a religious association or corporation not organized for private profit.

(C) For purposes of this subdivision, "harassment" because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions.

(4) For other types of discrimination as enumerated in subdivision (a), an employer remains as defined in subdivision (d) of Section 12926.

(5) Nothing contained in this subdivision shall be construed to apply the definition of employer found in this subdivision to subdivision (a).

(i) For an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to

employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.

(j) For an employer or other entity covered by this part to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment or to bar or to discharge a person from employment or from a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of a conflict between the person's religious belief or observance and any employment requirement, unless the employer or other entity covered by this part demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or observance, including the possibilities of excusing the person from those duties that conflict with his or her religious belief or observance or permitting those duties to be performed at another time or by another person, but is unable to reasonably accommodate the religious belief or observance without undue hardship on the conduct of the business of the employer or other entity covered by this part. Religious belief or observance, as used in this section, includes, but is not limited to, observance of a Sabbath or other religious holy day or days, and reasonable time necessary for travel prior and subsequent to a religious observance.

(k) For an employer or other entity covered by this part to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee. Nothing in this subdivision or in paragraph (1) or (2) of subdivision (a) shall be construed to require an accommodation that is demonstrated by the employer or other covered entity to produce undue hardship to its operation.

(*l*) Initial application of this section to discrimination by employers on the basis of mental disability shall be in accordance with the following schedule:

(1) Commencing January 1, 1993, for employers with 25 or more employees, the state, and its municipalities and political subdivisions.

(2) Commencing July 26, 1994, for all other employers specified in paragraph (2) of the subdivision of Section 12926 that defines "employer."

SEC. 86. Section 15814.26 of the Government Code is amended to read:

15814.26. A local government that enters into an energy service contract with the State Public Works Board pursuant to this chapter shall do both of the following:

(a) Include in the contract specific provisions to meet its energy service contract obligation determined pursuant to this chapter.

(b) Authorize the Controller, as part of the energy service contract, to withhold sufficient payments, from specific moneys that it otherwise would receive from the state, in order to meet its annual energy service contract obligation determined pursuant to this

chapter, if the provisions of subdivision (a) are for any reason insufficient to meet that annual energy service contract obligation.

SEC. 87. Section 15814.27 of the Government Code is amended to read:

15814.27. If a local government enters into an energy service contract with the State Public Works Board pursuant to this chapter, its governing body shall annually budget and appropriate the amounts payable under that energy service contract during that fiscal year. If the governing body fails or neglects to make the appropriations, the officer of the local government with responsibility for disbursing its funds shall transfer, from any money available in any fund of the treasury of that local government, the sums necessary to meet its energy service contract obligation determined pursuant to this chapter, and this transfer shall have the same force and effect as it would have had if the required appropriation had been made by the governing body of the local government.

SEC. 88. Section 21290 of the Government Code is amended to read:

21290. (a) Upon the legal separation or dissolution of marriage of a member, the court shall include in the judgment or a court order the date on which the parties separated.

(b) If the community property is divided in accordance with paragraph (3) of subdivision (a) of Section 2610 of the Family Code, the court shall order that the accumulated contributions and service credit attributable to periods of service during the marriage be divided into two separate and distinct accounts in the name of the member and the nonmember, respectively. Any service credit or accumulated contributions that are not explicitly awarded by the judgment or court order shall be deemed the exclusive property of the member.

(c) The court shall address the rights of the nonmember to the following:

(1) The right to a retirement allowance, and the consequent right to elect an optional settlement and designate a beneficiary.

(2) The right to a refund of accumulated contributions.

(3) The right to redeposit accumulated contributions that are eligible for redeposit by the member under Sections 20750 and 20752.

(4) The right to purchase service credit that is eligible for purchase by the member under Article 4 (commencing with Section 20990) and Article 5 (commencing with Section 21020) of Chapter 11.

(5) The right to designate a beneficiary to receive his or her accumulated contributions payable where death occurs prior to retirement.

(6) The right to designate a beneficiary for any unpaid allowance payable at the time of the nonmember's death.

(7) The right to elect coverage in the Second Tier for that member service that is subject to the Second Tier, provided that the election is made within one year of the establishment of the nonmember account or prior to the nonmember's retirement, whichever occurs first. Immediately upon establishment of a nonmember account, the board shall provide, by certified mail, the necessary form and information so that the election may be made.

(d) In the capacity of nonmember, he or she shall not be entitled to any disability or industrial disability retirement allowance, any basic death benefit, any special death benefit, any monthly allowance for survivors of a member or retired person, any insurance benefit, or retired member lump-sum death benefit. No survivor continuance allowance shall be payable to a survivor of a nonmember.

SEC. 89. Section 22825.5 of the Government Code is amended to read:

22825.5. (a) A contracting agency may amend its contract to provide that subdivision (c) of Section 22825.3 is applicable to employees who retire for service and who are first employed after the operative date of the amendment if the contract is amended to contain the following provisions:

(1) The employer's contribution for each officer, employee, or annuitant shall be based upon the principles prescribed for state officers, employees, or annuitants in Section 22825.1.

(2) The employer has, in the case of employees represented by a bargaining unit, reached an agreement with that bargaining unit to be subject to this section for the period specified in that memorandum of understanding.

(3) The employer certifies to the board, in the case of employees not represented by a bargaining unit, that there is no applicable memorandum of understanding.

(4) The credited service for purposes of determining the percentage of employer contributions applicable under this section shall mean service as defined in Section 20069, except that not less than five years of that service shall be performed entirely with that employer.

(5) The employer agrees to provide the board any information requested necessary to implement this section.

(b) This section shall apply to the Calaveras County Water District, the Alameda County Water District, the City of Fontana, and the City of Lincoln.

SEC. 90. Section 29550.2 of the Government Code, as added by Chapter 697 of the Statutes of 1992, is repealed.

SEC. 91. Section 51017.1 of the Government Code is amended to read:

51017.1. (a) Utilizing GIS-based location information furnished by the State Department of Health Services and the State Water Resources Control Board, at least once every two years the State Fire Marshal shall determine the identity of each pipeline or pipeline

segment that is regulated by the State Fire Marshal pursuant to this chapter that transports petroleum product when that pipeline is located within 1,000 feet of a public drinking water well.

(b) With assistance from the State Department of Health Services and the State Water Resources Control Board, the State Fire Marshal shall notify the operator of the pipelines identified in subdivision (a) of the following information:

(1) That the specific pipeline or pipeline segment has been identified as being located within 1,000 feet of a public drinking water well.

(2) The name of the water purveyor and the location of the public drinking water well affected. With advice from the GIS mapping advisory committee, created pursuant to subdivision (b) of Section 25299.97 of the Health and Safety Code, the identification of the pipelines and notification of pipeline owners by the State Fire Marshal pursuant to subdivision (a) and this subdivision shall begin once the GIS mapping system created by Section 25299.97 of the Health and Safety Code is able to provide accurate and useful information on pipeline and wellhead locations.

(c) Each pipeline operator notified pursuant to subdivision (b) shall prepare a pipeline wellhead protection plan as required by Section 51017.2 and submit the plan to the State Fire Marshal within 180 days from the date of either receiving the notification specified in subdivision (b), or adoption of regulations by the State Fire Marshal pursuant to Section 51017.2, whichever is later.

(d) With the advice of the State Department of Health Services, the State Water Resources Control Board, appropriate California regional water quality control boards, and local water purveyors, the State Fire Marshal shall review each wellhead protection plan submitted by a pipeline operator, and approve those plans that meet the criteria of the regulations adopted by the State Fire Marshal pursuant to Section 51017.2. The State Fire Marshal shall have discretion to allow a wellhead protection plan to address multiple wellheads where the conditions creating the risk to the wellheads are substantially similar. The pipeline operator shall implement the wellhead protection plan within 180 days from the date of receiving approval from the State Fire Marshal.

(e) Each pipeline operator having a wellhead protection plan approved by the State Fire Marshal pursuant to subdivision (d) shall evaluate that plan at least once every five years to ensure that the plan is in compliance with the current regulations established by the State Fire Marshal pursuant to Section 51017.2. The pipeline operator shall provide either written documentation to the State Fire Marshal that the previously approved wellhead protection plan has been evaluated and that no changes are warranted, or submit a new wellhead protection plan to remain in compliance with existing regulations or to meet the requirements of regulations adopted since the plan was approved.

(f) The pipeline operator subject to subdivision (c) may petition the State Fire Marshal in writing for an exemption from the requirements of subdivision (c). With advice from the State Water Resources Control Board, the State Department of Health Services, the California regional water quality control boards, and local water purveyors, the State Fire Marshal may approve the exemption if the petition demonstrates that the pipeline either does not transport motor vehicle fuel, or does not pose a significant threat to the public drinking water well based upon, but not limited to, the following criteria:

(1) Pipeline parameters, such as operation pressure, operating temperature, age, design, fabrication materials, construction, corrosive nature of the surrounding soil, cathodic protection, and feasibility of internal inspection or evaluation tools (smart pigs).

(2) Hydrogeologic parameters, such as soil permeability, direction and velocity of groundwater flow, aquifer location or depth, and hydrogeologic barriers or conduits.

(3) Water well parameters, such as depth of well and well construction.

(4) The nature of the fuel and its ability to migrate to public drinking water wells.

(5) The impact of human activity that may elevate or reduce the risk to the drinking water well.

SEC. 92. Section 53125 of the Government Code is amended to read:

53125. (a) The Legislature finds and declares that the efficient and effective use of the "911" emergency telephone system has recently been compromised by an increase in nonemergency calls to that number. The Legislature further finds and declares that these nonemergency calls can burden the "911" system, diverting "911" call-takers and radio dispatchers from true emergencies. For these reasons, the Legislature finds and declares that a need exists to implement procedures to limit the use of the "911" system to true emergencies, and to provide citizens with an alternative phone system for nonemergencies. The purpose of the pilot program is to assess whether the establishment of a "311" nonemergency telephone system will substantially decrease the use of the "911" system for nonemergencies.

(b) The Division of Telecommunications of the Department of General Services shall conduct a pilot program to evaluate alternative means to reduce the use of the "911" telephone number for nonemergency assistance. The pilot program shall consist of the following two approaches:

(1) The use of a "311" telephone number as a means of reaching local public safety agencies for nonemergency assistance.

(2) Improved marketing of the use of and access to existing nonemergency telephone numbers for nonemergency assistance, which may include, but shall not be limited to, providing decals for

each individual telephone within the study area, which include the nonemergency telephone numbers of public safety entities serving the area in which the telephone is located.

(c) The pilot program shall be implemented as soon as the Division of Telecommunications determines that it is practicable to do so, but in no event later than July 1, 1998. The division may select one or more locations to implement the pilot program, and shall, to the extent possible, select areas with comparable characteristics to serve as a study area for one of the two approaches specified in subdivision (b) to permit reasonable comparisons of the two alternative approaches, and is encouraged to share the costs of the pilot program with the local agency or agencies. Participation in the pilot program shall be on a voluntary basis on the part of the local agency or agencies. The division shall assess the effectiveness of each of the two approaches specified in subdivision (b) by evaluating the following factors:

(1) The overall impact of each of the two approaches specified in subdivision (b) on the "911" system.

(2) The costs associated with the establishment, operation, and maintenance of either approach specified in subdivision (b).

(3) The difficulties associated with appropriately routing emergency calls placed to the "311" telephone number or the existing nonemergency telephone number.

(4) The staffing requirements for "311" operators as compared to "911" dispatchers.

(5) Whether the use of either the "311" number or the existing nonemergency telephone number has caused confusion to the public, particularly with respect to the mistaken use of either "311" or the existing nonemergency telephone number instead of "911" by children.

(d) The pilot program shall be deemed to have demonstrated the success of either approach specified in subdivision (b) if the assessment required by subdivision (c) finds that the "311" telephone number or the existing nonemergency telephone number does not create confusion with the "911" program and finds that either approach specified in subdivision (b) has contributed to:

(1) Reducing "911" calls.

(2) Improving answer time for "911" calls.

(3) Reducing unanswered "911" calls.

(4) Reducing nonemergency "911" calls.

(e) The division shall submit a report to the Governor and the Legislature on the results of the pilot program and its assessment and comparison of each approach specified in subdivision (b) by July 1, 1999.

(f) This section shall remain in effect until January 1, 2000.

SEC. 93. Section 54902.5 of the Government Code is amended to read:

54902.5. (a) Notwithstanding Section 6103, the State Board of Equalization shall establish a schedule of fees for filing and processing the statements and maps or plats that are required to be filed with the board pursuant to Section 54902.

(1) The schedule shall not include any fee that exceeds the reasonably anticipated cost to the board of performing the work to which the fee relates, or an amount equal to 25 percent of the anticipated total tax revenue that will be collected by the city or district during the first full fiscal year, beginning on July 1, that the boundary changes are effective, as determined by the county auditor, whichever amount is less.

(2) For purposes of this subdivision, "anticipated total tax revenue" means the tax revenues that will be allocated to the city or district from all property located within the boundaries of the city or district, including the area affected by the boundary change.

(b) The city, district, or executive officer of a local agency formation commission, forwarding the statement to the tax or assessment levying authority for filing pursuant to Section 54900, shall accompany the statement with the necessary fee for transmittal to the board. However, with respect to a newly created city or district, no fee shall be required until the time that the city or district receives its first revenues.

SEC. 94. The heading of Chapter 2.1 (commencing with Section 68650) of Title 8 of the Government Code, as added by Chapter 869 of the Statutes of 1997, is amended and renumbered to read:

CHAPTER 2.3. CALIFORNIA HABEAS RESOURCE CENTER

SEC. 95. Section 68650 of the Government Code, as added by Section 3 of Chapter 869 of the Statutes of 1997, is amended and renumbered to read:

68660. As used in this chapter, "center" means the California Habeas Resource Center, and "board" means the board of directors of the center.

SEC. 96. Section 68651 of the Government Code, as added by Section 3 of Chapter 869 of the Statutes of 1997, is amended and renumbered to read:

68661. There is hereby created in the judicial branch of state government the California Habeas Resource Center, which shall have all of the following general powers and duties:

(a) To employ up to 30 attorneys who may be appointed by the Supreme Court to represent any person convicted and sentenced to death in this state, who is without counsel and who is determined by a court of competent jurisdiction to be indigent, for the purpose of instituting and prosecuting postconviction actions in the state and federal courts, challenging the legality of the judgment or sentence imposed against that person, and preparing petitions for executive clemency. Any such appointment may be concurrent with the

appointment of the State Public Defender or other counsel for purposes of direct appeal under Section 11 of Article VI of the California Constitution.

(b) To file motions seeking compensation for representation and reimbursement for expenses pursuant to Section 3006A of Title 18 of the United States Code when providing representation to indigent persons in the federal courts, and transmit those payments to the treasurer for deposit in a special account in the General Fund which, upon appropriation, shall be available for the purposes of the center.

(c) To work with the Supreme Court in recruiting members of the private bar to accept death penalty habeas case appointments.

(d) To establish and periodically update a roster of attorneys qualified as counsel in postconviction proceedings in capital cases.

(e) To establish and periodically update a roster of experienced investigators and experts who are qualified to assist counsel in postconviction proceedings in capital cases.

(f) To employ investigators and experts as staff to provide services to appointed counsel upon request of counsel, provided that where the provision of those services is to private counsel under appointment by the Supreme Court, those services shall be pursuant to contract between appointed counsel and the center.

(g) To provide legal or other advice or, to the extent not otherwise available, any other assistance to appointed counsel in postconviction proceedings as is appropriate where not prohibited by law.

(h) To develop a brief bank of pleadings and related materials on significant, recurring issues which arise in postconviction proceedings in capital cases and to make those briefs available to appointed counsel.

(i) To evaluate cases and recommend assignment by the court of appropriate attorneys.

(j) To provide assistance and case progress monitoring as needed.

(k) To timely review case billings and recommend compensation of members of the private bar to the court.

(*l*) The center shall annually report to the Legislature, the Governor, and the Supreme Court on the status of the appointment of counsel for indigent prisoners in postconviction capital cases, and on the operations of the office. On or before January 1, 2000, the office of the Legislative Analyst shall evaluate the available reports.

SEC. 97. Section 68652 of the Government Code, as added by Section 3 of Chapter 869 of the Statutes of 1997, is amended and renumbered to read:

68662. The Supreme Court shall offer to appoint counsel to represent all state prisoners subject to a capital sentence for purposes of state postconviction proceedings, and shall enter an order containing one of the following:

(a) The appointment of one or more counsel to represent the prisoner in postconviction state proceedings upon a finding that the person is indigent and has accepted the offer to appoint counsel or

is unable to competently decide whether to accept or reject that offer.

(b) A finding, after a hearing if necessary, that the prisoner rejected the offer to appoint counsel and made that decision with full understanding of the legal consequences of the decision.

(c) The denial to appoint counsel upon a finding that the person is not indigent.

SEC. 98. Section 68653 of the Government Code, as added by Section 3 of Chapter 869 of the Statutes of 1997, is amended and renumbered to read:

68663. No counsel appointed to represent a state prisoner under capital sentence in state postconviction proceedings shall have previously represented the prisoner at trial or on direct appeal in the case for which the appointment is made, unless the prisoner and counsel expressly requests continued representation.

SEC. 99. Section 68654 of the Government Code, as added by Section 3 of Chapter 869 of the Statutes of 1997, is amended and renumbered to read:

68664. (a) The center shall be managed by an executive director who shall be responsible for the day-to-day operations of the center.

(b) The executive director shall be chosen by a five-member board of directors and confirmed by the Senate. Each Appellate Project shall appoint one board member, all of whom shall be attorneys. However, no attorney who is employed as a judge, prosecutor, or in a law enforcement capacity shall be eligible to serve on the board. The executive director shall serve at the will of the board.

(c) Each member of the board shall be appointed to serve a four-year term, and vacancies shall be filled in the same manner as the original appointment. Members of the board shall receive no compensation, but shall be reimbursed for all reasonable and necessary expenses incidental to their duties. The first members of the board shall be appointed no later than February 1, 1998.

(d) The executive director shall meet the appointment qualifications of the State Public Defender as specified in Section 15400.

(e) The executive director shall receive the salary that shall be specified for the executive director in Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2.

SEC. 100. Section 68655 of the Government Code, as added by Section 3 of Chapter 869 of the Statutes of 1997, is amended and renumbered to read:

68665. The Judicial Council and the Supreme Court shall adopt, by rule of court, binding and mandatory competency standards for the appointment of counsel in death penalty direct appeals and habeas corpus proceedings.

SEC. 100.5. Section 68656 of the Government Code, as added by Section 3 of Chapter 869 of the Statutes of 1997, is amended and renumbered to read:

68666. (a) The Supreme Court may compensate counsel representing indigent defendants in automatic appeals arising out of a judgment of death or for state postconviction proceedings in those cases, at a rate of at least one hundred twenty-five dollars ($125) per allowable hour, as defined by the court's Payment Guidelines for Appointed Counsel Representing Indigent Criminal Appellants. However, nothing in this section is intended to prohibit the hiring of counsel under a flat-fee arrangement.

(b) The Supreme Court may raise the guideline limitation on investigative and other expenses allowable for counsel to adequately investigate and present collateral claims to up to twenty-five thousand dollars ($25,000) without an order to show cause.

(c) It is the intent of the Legislature that payments to appointed counsel be made within 60 days of submission of a billing.

SEC. 101. Section 73759 of the Government Code is amended to read:

73759. (a) Clerical employees of the district may be appointed, as follows:

(1) Borden Division:

(A) One municipal court supervisor who shall receive the salary specified in range 15.5 to increase to range 17 effective February 1, 1997.

(B) Two municipal court clerks III who shall receive the salary specified in range 12, to increase to range 13 effective April 1, 1997.

(C) Two and one-half municipal court clerks II who shall receive the salary specified in range 11, to increase to range 12 effective March 1, 1997.

(2) Chowchilla Division:

(A) One municipal court supervisor who shall receive the salary specified in range 16.5.

(B) Two municipal court clerks III's who shall receive the salary specified in range 12, to increase to range 13 effective April 1, 1997.

(C) One municipal court clerk II who shall receive the salary specified in range 11, to increase to range 12 effective March 1, 1997.

(3) Madera Division:

(A) One municipal court supervisor who shall receive the salary specified in range 15.5, to increase to range 17 effective February 1, 1997.

(B) One senior municipal court clerk who shall receive the salary specified in range 14 effective February 1, 1997.

(C) One municipal court clerk III who shall receive the salary specified in range 12, to increase to range 13, effective April 1, 1997.

(D) Eight and one-quarter municipal court clerks I or II. Municipal court clerks I shall receive the salary specified in range 8.5 to increase to 9.5 effective March 1, 1997. Municipal court clerks II

shall receive the salary specified in range 11, to increase to range 12 effective March 1, 1997.

(E) One office assistant I who shall receive the salary specified in range 5.

(F) One court interpreter who shall receive the salary specified in range 34 (Table B).

(4) Sierra Division:

(A) One municipal court supervisor who shall receive the salary specified in range 15.5, to increase to range 17 effective February 1, 1997.

(B) Two municipal court clerks III who shall receive the salary specified in range 12, to increase to range 13 effective April 1, 1997.

(C) Two municipal court clerks II who shall receive the salary specified in range 11, to increase to range 12 effective March 1, 1997.

(b) Notwithstanding the provisions of Article 4 (commencing with Section 72150), and the provisions of this article, whenever the business of the district requires a greater number of employees in order to effectively carry out the duties and functions of the respective divisions, a majority of the judges of the district may, with the approval of the board, establish new positions for officers, attachés, and employees in addition to those provided by this article. The order and approval establishing those positions shall designate the position, title, and salary range for each position.

(c) At the request of the judges of the district, the county personnel department shall assist in the recruitment and examination of court personnel. Personnel hired or appointed as official reporters, official interpreters, staff attorneys, administrators, or other nonclerical positions on or after the effective date of this article shall serve at, and may be terminated at, the pleasure of the majority of the judges of the district. Other provisions of the county civil service or personnel rules or procedures do not apply to those court employees unless made applicable by local court rule. Benefits other than salary shall, for all court personnel, be the same as are now or may be hereafter be provided to equivalent county classifications, as that equivalency is determined by agreement of the majority of the judges of the district and the board, but shall not exceed those provided for equivalent county classifications. To the extent necessary, and for the sole purpose of implementing the intent of this subdivision, court employees shall be deemed county employees for inclusion in those benefit programs provided to county employees as a group or groups. All court employees, except pro tempore court reporters shall, if otherwise eligible under statutory and retirement system membership requirements, be included in the county's retirement system.

SEC. 102. Section 75050 of the Government Code is amended to read:

75050. (a) Upon the legal separation or dissolution of marriage of a member, the court shall include in the judgment or a court order the date on which the parties separated.

(b) If the court orders the division of the community property interest in the system pursuant to paragraph (3) of subdivision (a) of Section 2610 of the Family Code, the accumulated contributions and service credit attributable to periods of service during the marriage shall be divided into two separate and distinct accounts in the name of the member and nonmember, respectively. Any service credit or accumulated contributions which are not explicitly awarded by the judgment or court order shall be deemed the exclusive property of the member.

(c) Upon receipt of the court order separating the account of the member and the nonmember pursuant to this section, the board shall determine the rights of the nonmember, taking into consideration the court order and the account of the member. These rights may include the following:

(1) The right to a retirement allowance.

(2) The right to a refund of accumulated retirement contributions.

(3) The right to redeposit accumulated contributions which are eligible for redeposit by the member under Section 75028.5.

(4) The right to purchase service credit which is eligible for purchase by the member under Sections 75029 to 75030.5.

(5) The right to designate a beneficiary to receive his or her accumulated contributions payable where death occurs prior to retirement.

(6) The right to designate a beneficiary for any unpaid allowance payable at the time of the nonmember's death.

(d) In the capacity of nonmember, the nonmember shall not be entitled to any disability retirement allowance.

SEC. 103. Section 95022 of the Government Code is amended to read:

95022. The statewide system of early intervention shall be administered by the State Department of Developmental Services in collaboration with the State Department of Education and with the advice and assistance of an interagency coordinating council established pursuant to federal regulations and shall include all of the following mandatory components:

(a) A central directory that includes information about early intervention services, resources, and experts available in the state, professionals and other groups providing services to eligible infants and toddlers, and research and demonstration projects being conducted in the state. The central directory shall specify the nature and scope of the services available and the telephone number and address for each of the sources listed in the directory.

(b) A public awareness program focusing on early identification of eligible infants and toddlers and the dissemination of information

about the purpose and scope of the system of early intervention services and how to access evaluation and other early intervention services.

(c) Personnel standards that ensure that personnel are appropriately and adequately prepared and trained.

(d) A comprehensive system of personnel development that provides training for personnel including, but not limited to, public and private providers, primary referral sources, paraprofessionals, and persons who will serve as service coordinators. The training shall specifically address at least all of the following:

(1) Understanding the early intervention services system, including the family service plan process.

(2) Meeting the interrelated social, emotional, and health needs of eligible infants and toddlers.

(3) Assisting families in meeting the special developmental needs of the infant or toddler, assisting professionals to utilize best practices in family focused early intervention services and promoting family professional collaboration.

(4) Reflecting the unique needs of local communities and promoting culturally competent service delivery.

(e) A comprehensive child-find system, including policies and procedures that ensure that all infants and toddlers who may be eligible for services under this title are identified, located, and evaluated, that services are coordinated between participating agencies, and that infants and toddlers are referred to the appropriate agency.

(f) A surrogate parent program established pursuant to Section 303.406 of Title 34 of the Code of Federal Regulations to be used by regional centers and local education agencies.

SEC. 104. Section 651 of the Harbors and Navigation Code, as amended by Chapter 1106 of the Statutes of 1989, is repealed.

SEC. 105. 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 clinical 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.

SEC. 106. Section 1357.52 of the Health and Safety Code is amended to read:

1357.52. Except in the case of a late enrollee, or for satisfaction of a preexisting condition clause in the case of initial coverage of an eligible employee, a plan may not exclude any eligible employee or dependent who would otherwise be entitled to health care services on the basis of any of the following: the health status, the medical

condition, including both physical and mental illnesses, the claims experience, the medical history, the genetic information, or the disability or evidence of insurability including conditions arising out of acts of domestic violence of that employee or dependent. No plan contract may limit or exclude coverage for a specific eligible employee or dependent by type of illness, treatment, medical condition, or accident, except for preexisting conditions as permitted by Section 1357.06.

SEC. 107. Section 1746 of the Health and Safety Code is amended to read:

1746. As used in this chapter, the following definitions shall apply:

(a) "Bereavement services" means those services available to the surviving family members for a period of at least one year after the death of the patient. These services shall include an assessment of the needs of the bereaved family, and the development of a care plan that meets these needs, both prior to, and following the death of the patient.

(b) "Hospice" means a specialized form of interdisciplinary health care that is designed to provide palliative care, alleviate the physical, emotional, social, and spiritual discomforts of an individual who is experiencing the last phases of life due to the existence of a terminal disease, to provide supportive care to the primary care giver and the family of the hospice patient, and which meets all of the following criteria:

(1) Considers the patient and the patient's family, in addition to the patient, as the unit of care.

(2) Utilizes an interdisciplinary team to assess the physical, medical, psychological, social, and spiritual needs of the patient and the patient's family.

(3) Requires the interdisciplinary team to develop an overall plan of care and to provide coordinated care which emphasizes supportive services, including, but not limited to, home care, pain control, and limited inpatient services. Limited inpatient services are intended to ensure both continuity of care and appropriateness of services for those patients who cannot be managed at home because of acute complications or the temporary absence of a capable primary care giver.

(4) Provides for the palliative medical treatment of pain and other symptoms associated with a terminal disease, but does not provide for efforts to cure the disease.

(5) Provides for bereavement services following death to assist the family to cope with social and emotional needs associated with the death of the patient.

(6) Actively utilizes volunteers in the delivery of hospice services.

(7) To the extent appropriate, based on the medical needs of the patient, provides services in the patient's home or primary place of residence.

(c) "Inpatient care arrangements" means arranging for those short inpatient stays that may become necessary to manage acute symptoms or due to the temporary absence, or need for respite, of a capable primary caregiver. The hospice shall arrange for these stays, ensuring both continuity of care and the appropriateness of services.

(d) "Medical direction" means those services provided by a licensed physician and surgeon who is charged with the responsibility of acting as a consultant to the interdisciplinary team, a consultant to the patient's attending physician and surgeon, as requested, with regard to pain and symptom management, and liaison with physicians and surgeons in the community.

(e) "An interdisciplinary team" means the hospice care team that includes, but is not limited to, the patient and patient's family, a physician and surgeon, a registered nurse, a social worker, a volunteer, and a spiritual caregiver. The team shall be coordinated by a registered nurse and shall be under medical direction. The team shall meet regularly to develop and maintain an appropriate plan of care.

(f) "Plan of care" means a written plan developed by the attending physician and surgeon, the medical director or physician and surgeon designee, and the interdisciplinary team that addresses the needs of a patient and family admitted to the hospice program. The hospice shall retain overall responsibility for the development and maintenance of the plan of care and quality of services delivered.

(g) "Skilled nursing services" means nursing services provided by or under the supervision of a registered nurse under a plan of care developed by the interdisciplinary team and the patient's physician and surgeon to a patient and his or her family that pertain to the palliative, supportive services required by patients with a terminal illness. Skilled nursing services include, but are not limited to, patient assessment, evaluation and case management of the medical nursing needs of the patient, the performance of prescribed medical treatment for pain and symptom control, the provision of emotional support to both the patient and his or her family, and the instruction of caregivers in providing personal care to the patient. Skilled nursing services shall provide for the continuity of services for the patient and his or her family. Skilled nursing services shall be available on a 24-hour on-call basis.

(h) "Social service/counseling services" means those counseling and spiritual care services that assist the patient and his or her family to minimize stresses and problems that arise from social, economic, psychological, or spiritual needs by utilizing appropriate community resources, and maximize positive aspects and opportunities for growth.

(i) "Terminal disease" or "terminal illness" means a medical condition resulting in a prognosis of life of one year or less, if the disease follows its natural course.

(j) "Volunteer services" means those services provided by trained hospice volunteers who have agreed to provide service under the direction of a hospice staff member who has been designated by the hospice to provide direction to hospice volunteers. Hospice volunteers may be used to provide support and companionship to the patient and his or her family during the remaining days of the patient's life and to the surviving family following the patient's death.

(k) "Multiple location" means a location or site from which a hospice makes available basic hospice services within the service area of the parent agency. A multiple location shares administration, supervision, policies and procedures, and services with the parent agency in a manner that renders it unnecessary for the site to independently meet the licensing requirements.

(*l*) "Home health aide" has the same meaning as set forth in subdivision (c) of Section 1727.

(m) "Home health aide services" means those services as set forth in subdivision (d) of Section 1727 provided for the personal care of the terminally ill patient and the performance of related tasks in the patient's home in accordance with the plan of care in order to increase the level of comfort and to maintain personal hygiene and a safe, healthy environment for the patient.

(n) "Parent agency" means the part of the hospice that is licensed pursuant to this chapter, and develops and maintains administrative controls of multiple locations. All services provided by the multiple location and parent agency are the responsibility of the parent agency.

SEC. 108. Section 40928 of the Health and Safety Code is amended and renumbered to read:

40717.8. (a) For purposes of this section, the following terms have the following meaning:

(1) "Event center" means a community center, activity center, auditorium, convention center, stadium, coliseum, arena, sports facility, racetrack, pavilion, amphitheater, theme park, amusement park, fairgrounds, or other building, collection of buildings, or facility which is used exclusively or primarily for the holding of sporting events, athletic contests, contests of skill, exhibitions, conventions, meetings, spectacles, concerts, or shows, or for providing public amusement or entertainment.

(2) "Average vehicle ridership" means the total number of attendees arriving in vehicles parking in areas controlled by the event center, divided by the total number of those vehicles parking in areas controlled by the event center.

(b) (1) Notwithstanding Section 40717, or any other provision of this chapter, and to the extent consistent with federal law, no district, or regional or local agency to which a district has delegated the authority to implement transportation control measures pursuant to Section 40717, and which is acting pursuant to that delegated authority, shall do either of the following:

(A) Require an event center which achieves an average vehicle ridership greater than 2.20 to implement any transportation control requirements that are intended to achieve reductions in vehicle trips or vehicle miles traveled by event center attendees.

(B) Require an event center which, since 1987, has achieved a 12.5 percent reduction in vehicle trips or vehicle miles traveled, to implement additional transportation control requirements that are also intended to achieve reductions in vehicle trips or vehicle miles traveled by event center attendees.

(2) A district, or regional or local agency, may require event centers which achieve an average vehicle ridership greater than 2.20, or which, since 1987, has achieved a 12.5 percent reduction in vehicle trips or vehicle miles traveled, to implement approved alternative strategies which will achieve emission reductions that are equivalent to those that would be achieved by the imposition of transportation control requirements intended to reduce vehicle trips or vehicle miles traveled by event center attendees, including, but not limited to, those strategies specified in subdivision (c).

(c) A district or regional or local agency may impose requirements on any event center, without permitting that event center to implement alternative strategies to achieve equivalent emissions reductions, for any of the following purposes:

(1) Traffic management before and after events.

(2) Parking management and vehicle flow within parking areas controlled by the event center.

(3) Reducing the amount of vehicle idling before and after events.

(4) Implementing marketing or education programs designed to educate attendees on mass transit or other alternative transportation methods for transit to and from the event center.

(5) Achieving a designated average vehicle ridership for vehicles which carry persons who are traveling to or from their employment at an event center.

(6) Other emission reduction strategies not relating to reductions in vehicle trips or vehicle miles traveled by event center attendees.

SEC. 109. Section 40929 of the Health and Safety Code is amended and renumbered to read:

40717.9. (a) Notwithstanding Section 40454, 40457, 40717, 40717.1, or 40717.5, or any other provision of law, a district, congestion management agency, as defined in subdivision (b) of Section 65088.1 of the Government Code, or any other public agency shall not require an employer to implement an employee trip reduction program unless the program is expressly required by federal law and the elimination of the program will result in the imposition of federal sanctions, including, but not limited to, the loss of federal funds for transportation purposes.

(b) Nothing in this section shall preclude a public agency from regulating indirect sources in any manner that is not specifically prohibited by this section, where otherwise authorized by law.

SEC. 110. The heading of Article 1.5 (commencing with Section 42320) of Chapter 4 of Part 4 of the Health and Safety Code is amended and renumbered to read:

Article 1.3. Air Pollution Permit Streamlining Act

SEC. 111. Section 44056 of the Health and Safety Code is amended to read:

44056. (a) Except as otherwise provided in Sections 44051 and 44051.5, any person who violates this chapter, or any order, rule, or regulation of the department adopted pursuant to this chapter, is liable for a civil penalty of not less than one hundred fifty dollars ($150) and not more than two thousand five hundred dollars ($2,500) for each day in which each violation occurs. Any action to recover civil penalties shall be brought by the Attorney General in the name of the state on behalf of the department, or may be brought by any district attorney, city attorney, or attorney for a district.

(b) The penalties specified in subdivision (a) do not apply to an owner or operator of a motor vehicle, except an owner or operator who does any of the following:

(1) Obtains, or who attempts to obtain, a certificate of compliance or noncompliance, a repair cost waiver, or an economic hardship extension without complying with Section 44015.

(2) Obtains, or attempts to obtain, a certificate of compliance, a repair cost waiver, or an economic hardship extension by means of fraud, including, but not limited to, offering or giving any form of financial or other inducement to any person for the purpose of obtaining a certificate of compliance for a vehicle that has not been tested or has been tested improperly.

(3) Registers a motor vehicle at an address other than the owner's or operator's residence address for the purpose of avoiding the requirements of this chapter.

(4) Obtains, or attempts to obtain, a certificate of compliance by other means when required to report to the test-only facility after being identified as a tampered vehicle or gross polluter pursuant to Section 44015 or 44081.

(c) Any person who obtains or attempts to obtain a repair cost waiver, or economic hardship extension pursuant to this chapter by falsifying information shall be subject to a civil penalty of not less than one hundred fifty dollars ($150) and not more than one thousand dollars ($1,000), and shall be made ineligible for receiving any repair assistance of any kind pursuant to this chapter.

SEC. 112. Section 44401 of the Health and Safety Code is amended to read:

44401. As used in this part, the following terms have the following meaning:

(a) "Commercial space program" means all nongovernmental activities and equipment at a facility, as defined in subdivision (b),

that involve the manufacture or assembly of space vehicles, space launch vehicles, or satellites for purposes of commercial space launch, or that engage in the preparation for launch or the launch of those vehicles or satellites, that have a Standard Industrial Classification code other than national security, and that are the responsibility of, and are controlled by, the owner or operator of the facility.

(b) "Facility" means every structure, appurtenance, and improvement that is located on one or more contiguous or adjacent properties under the control of the same person, or under the common control of the same persons.

(c) "Space vehicle" or "expendable space launch vehicle" means a fabricated part, assembly of parts, or completed unit designed to boost payload spacecraft into the atmosphere and which is consumed or destroyed in the process of boosting the payload from the launchpad.

(d) "Space launch" means to place or attempt to place a space vehicle or expendable space launch vehicle and any payload in suborbital trajectory, in Earth orbit in outer space, or otherwise in outer space.

SEC. 113. 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 the 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 the child, of a parent or other informant, and date signed.

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

if other than the 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 the 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 the mother and father.

(11) Principal source of payment 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, and 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 payment 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, and 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 the physician's and surgeon's designee, who shall insert 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. 114. Section 111940 of the Health and Safety Code is amended to read:

111940. (a) If any person violates any provision of Chapter 4 (commencing with Section 111950), Chapter 5 (commencing with Section 112150), Chapter 6 (commencing with Section 112350), Chapter 7 (commencing with Section 112500), Chapter 8 (commencing with Section 112650), Chapter 10 (commencing with Section 113025), or Article 3 (commencing with Section 113250) of Chapter 11, or Chapter 4 (commencing with Section 108100) of Part 3, or any regulation adopted pursuant to these provisions, the

department may assess a civil penalty against that person as provided by this section.

(b) The penalty may be in an amount not to exceed one thousand dollars ($1,000) per day. Each day that a violation continues shall be considered a separate violation.

(c) If, after examination of a possible violation and the facts surrounding that possible violation, the department concludes that a violation has occurred, the department may issue a complaint to the person charged with the violation. The complaint shall allege the acts or failures to act that constitute the basis for the violation and the amount of the penalty. The complaint shall be served by personal service or by certified mail and shall inform the person so served of the right to a hearing.

(d) Any person served with a complaint pursuant to subdivision (c) of this section may, within 20 days after service of the complaint, request a hearing by filing with the department a notice of defense. A notice of defense is deemed to have been filed within the 20-day period if it is postmarked within the 20-day period. If a hearing is requested by the person, it shall be conducted within 90 days after the receipt by the department of the notice of defense. If no notice of defense is filed within 20 days after service of the complaint, the department shall issue an order setting the penalty as proposed in the complaint unless the department and the person have entered into a settlement agreement, in that case the department shall issue an order setting the penalty in the amount specified in the settlement agreement. When the person has not filed a notice of defense or where the department and the person have entered into a settlement agreement, the order shall not be subject to review by any court or agency.

(e) Any hearing required under this section shall be conducted pursuant to the procedures specified in Section 100171, except to the extent they are inconsistent with the specific requirements of this section.

(f) Orders setting civil penalties under this section shall become effective and final upon issuance thereof, and payment shall be made within 30 days of issuance. A copy of the order shall be served by personal service or by certified mail upon the person served with the complaint.

(g) Within 30 days after service of a copy of a decision issued by the director after a hearing, any person so served may file with the superior court a petition for writ of mandate for review of the decision. Any person who fails to file the petition within this 30-day period may not challenge the reasonableness or validity of the decision or order of the director in any judicial proceeding brought to enforce the decision or order or for other remedies. Section 1094.5 of the Code of Civil Procedure shall govern any proceedings conducted pursuant to this subdivision. In all proceedings pursuant to this subdivision, the court shall uphold the decision of the director

if the decision is based upon substantial evidence in the whole record. The filing of a petition for writ of mandate shall not stay any corrective action required pursuant to the Miscellaneous Food, Food Facility, and Hazardous Substances Act (Section 27) or the accrual of any penalties assessed pursuant to this section. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

(h) The remedies under this section are in addition to, and do not supersede, or limit, any and all other remedies, civil or criminal.

SEC. 115. Section 1760.5 of the Insurance Code is amended to read:

1760.5. (a) The provisions of this chapter limiting the insurance that may be placed with nonadmitted insurers and requiring any report thereof shall not apply to any of the following:

(1) Reinsurance of the liability of an admitted insurer.

(2) Insurance against perils of navigation, transit or transportation upon hulls, freights or disbursements, or other shipowner interests; upon goods, wares, merchandise and all other personal property and interests therein, in course of exportation from or importation into any country, or transportation coastwise, including transportation by land or water from point of origin to final destination and including war risks; and marine builder's risks, drydocks and marine railways, including insurance of ship repairer's liability, and protection and indemnity insurance, but excluding insurance covering bridges or tunnels.

(3) Aircraft or spacecraft insurance.

(4) Insurance on property or operations of railroads engaged in interstate commerce.

(b) The insurance specified in paragraphs (2), (3), and (4) of subdivision (a) may be placed with a nonadmitted insurer only by and through a special lines' surplus line broker. The license of a special lines' surplus line broker shall be applied for and procured and shall be subject to the same fees for filing on issuance in the same manner as the license of a surplus line broker, except that in lieu of the bond required by Section 1765, there shall be delivered to the commissioner a bond in the form, amounts, and conditions specified in Sections 1663 and 1665 for an insurance broker and only one fee shall be collected from one person for both licenses. The licensee in respect to the business shall be subject to all the provisions of this chapter except Sections 1761, 1763, 1765.1, and 1775.5.

(c) The commissioner may address to any licensed special lines' surplus line broker a written request for full and complete information respecting the financial stability, reputation, and integrity of any nonadmitted insurer with whom the licensee has dealt or proposes to deal in the transaction of insurance specified in paragraphs (2), (3), or (4) of subdivision (a). The licensee so addressed shall promptly furnish in written or printed form so much of the information requested as he or she can produce together with

a signed statement identifying the same and giving reasons for omissions, if any. After due examination of the information and accompanying statement, the commissioner may, if he or she believes it to be in the public interest, order in writing the licensee to place no further insurance business on property located or operations conducted within or on the lives of persons who are residents of this state with that nonadmitted insurer on behalf of any person. Any placement with that nonadmitted insurer made by a licensee after receipt of the order is a violation of this chapter. The commissioner may issue an order if he or she finds that a nonadmitted insurer with whom the licensee has dealt or proposes to deal in the transaction of insurance is in an unsound financial condition, is disreputable, or is lacking in integrity. The order shall also include notice of a hearing to be held at a time and place fixed therein, which shall be not less than 20 nor more than 30 days from service of the order upon the licensee.

(d) The commissioner may, with respect to business written or placed under the provisions of this section, require information and reports thereof that the commissioner considers necessary, convenient, or advisable.

(e) Each placing of insurance in violation of this chapter is a misdemeanor.

(f) The commissioner may revoke, suspend, or deny any license granted pursuant to this code in accordance with the procedure provided in Article 13 (commencing with Section 1737) of Chapter 5, or any certificate of authority granted pursuant to this code in accordance with the procedure provided in Section 704 whenever the commissioner finds that the licensee or holder of the certificate has committed a violation of this section.

(g) The premium for insurance placed by or through a special lines' surplus line broker pursuant to this section shall not be subject to the tax imposed upon the broker based upon gross premiums paid for insurance placed under authority conferred by the license.

SEC. 116. Section 10273.4 of the Insurance Code is amended to read:

10273.4. All disability insurers writing, issuing, or administering group health benefit plans shall make all of these health benefit plans renewable with respect to the policyholder, contractholder, or employer except as follows:

(a) For nonpayment of the required premiums by the policyholder, contractholder, or employer.

(b) For fraud or other intentional misrepresentation by the policyholder, contractholder, or employer.

(c) For noncompliance with a material health benefit plan contract provision.

(d) If the insurer ceases to provide or arrange for the provision of health care services for new group health benefit plans in this state, provided that the following conditions are satisfied:

(1) Notice of the decision to cease writing, issuing, or administering new or existing group health benefit plans in that state is provided to the commissioner and to either the policyholder, contractholder, or employer at least 180 days prior to discontinuation of that coverage.

(2) Group health benefit plans shall not be canceled for 180 days after the date of the notice required under paragraph (1) and for that business of a plan that remains in force, any disability insurer that ceases to write, issue, or administer new group health benefit plans shall continue to be governed by this section with respect to business conducted under this section.

(3) Except as authorized under subdivision (h) of Section 10705, or unless the commissioner had made a determination pursuant to subdivision (q) of Section 10712, a disability insurer that ceases to write, issue, or administer new group health benefit plans in this state after the effective date of this section shall be prohibited from writing, issuing, or administering new group health benefit plans to employers in this state for a period of five years from the date of notice to the commissioner.

(e) If a disability insurer withdraws a group health benefit plan from the market, provided that the plan notifies all affected contractholders, policyholders, or employers and the commissioner at least 90 days prior to the discontinuation of the health benefit plans, and that the insurer makes available to the contractholder, policyholder, or employer all health benefit plans that it makes available to new employer business without regard to the claims experience of health-related factors of insureds or individuals who may become eligible for the coverage.

(f) For the purposes of this section, "health benefit plan" shall have the same meaning as in subdivision (a) of Section 10198.6 and Section 10198.61.

(g) For the purposes of this section, "eligible employee" shall have the same meaning as in Section 10700, except that it applies to all health benefit plans issued to employer groups of two or more employees.

SEC. 117. Section 10700 of the Insurance Code is amended to read:

10700. As used in this chapter:

(a) "Agent or broker" means a person or entity licensed under Chapter 5 (commencing with Section 1621) of Part 2 of Division 1.

(b) "Benefit plan design" means a specific health coverage product issued by a carrier to small employers, to trustees of associations that include small employers, or to individuals if the coverage is offered through employment or sponsored by an employer. It includes services covered and the levels of copayment and deductibles, and it may include the professional providers who are to provide those services and the sites where those services are to be provided. A benefit plan design may also be an integrated

system for the financing and delivery of quality health care services which has significant incentives for the covered individuals to use the system.

(c) "Board" means the Major Risk Medical Insurance Board.

(d) "Carrier" means any disability insurance company or any other entity that writes, issues, or administers health benefit plans that cover the employees of small employers, regardless of the situs of the contract or master policyholder. For the purposes of Article 3 (commencing with Section 10719) and Article 4 (commencing with Section 10730), "carrier" also includes health care service plans.

(e) "Dependent" means the spouse or child of an eligible employee, subject to applicable terms of the health benefit plan covering the employee, and includes dependents of guaranteed association members if the association elects to include dependents under its health coverage at the same time it determines its membership composition pursuant to subdivision (z).

(f) "Eligible employee" means either of the following:

(1) Any permanent employee who is actively engaged on a full-time basis in the conduct of the business of the small employer with a normal workweek of at least 30 hours, in the small employer's regular place of business, who has met any statutorily authorized applicable waiting period requirements. The term includes sole proprietors or partners of a partnership, if they are actively engaged on a full-time basis in the small employer's business, and they are included as employees under a health benefit plan of a small employer, but does not include employees who work on a part-time, temporary, or substitute basis. It includes any eligible employee as defined in this paragraph who obtains coverage through a guaranteed association. Employees of employers purchasing through a guaranteed association shall be deemed to be eligible employees if they would otherwise meet the definition except for the number of persons employed by the employer.

(2) Any member of a guaranteed association as defined in subdivision (z).

(g) "Enrollee" means an eligible employee or dependent who receives health coverage through the program from a participating carrier.

(h) "Financially impaired" means, for the purposes of this chapter, a carrier that, on or after the effective date of this chapter, is not insolvent and is either:

(1) Deemed by the commissioner to be potentially unable to fulfill its contractual obligations.

(2) Placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

(i) "Fund" means the California Small Group Reinsurance Fund.

(j) "Health benefit plan" means a policy or contract written or administered by a carrier that arranges or provides health care benefits for the covered eligible employees of a small employer and

their dependents. The term does not include accident only, credit, disability income, coverage of Medicare services pursuant to contracts with the United States government, Medicare supplement, long-term care insurance, dental, vision, coverage issued as a supplement to liability insurance, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(k) "In force business" means an existing health benefit plan issued by the carrier to a small employer.

(*l*) "Late enrollee" means an eligible employee or dependent who has declined health coverage under a health benefit plan offered by a small employer at the time of the initial enrollment period provided under the terms of the health benefit plan, and who subsequently requests enrollment in a health benefit plan of that small employer, provided that the initial enrollment period shall be a period of at least 30 days. It also means any member of an association that is a guaranteed association as well as any other person eligible to purchase through the guaranteed association when that person has failed to purchase coverage during the initial enrollment period provided under the terms of the guaranteed association's health benefit plan and who subsequently requests enrollment in the plan, provided that the initial enrollment period shall be a period of at least 30 days. However, an eligible employee, another person eligible for coverage through a guaranteed association pursuant to subdivision (z), or dependent shall not be considered a late enrollee if: (1) the individual meets all of the following: (A) was covered under another employer health benefit plan or no share-of-cost Medi-Cal coverage at the time the individual was eligible to enroll; (B) certified at the time of the initial enrollment that coverage under another employer health benefit plan or no share-of-cost Medi-Cal coverage was the reason for declining enrollment provided that, if the individual was covered under another employer health plan, the individual was given the opportunity to make the certification required by this subdivision and was notified that failure to do so could result in later treatment as a late enrollee; (C) has lost or will lose coverage under another employer health benefit plan as a result of termination of employment of the individual or of a person through whom the individual was covered as a dependent, change in employment status of the individual, or of a person through whom the individual was covered as a dependent, the termination of the other plan's coverage, cessation of an employer's contribution toward an employee or dependent's coverage, death of the person through whom the individual was covered as a dependent, divorce, or loss of no share-of-cost Medi-Cal coverage; and (D) requests enrollment within 30 days after termination of coverage or employer contribution toward coverage provided under another employer health benefit plan; (2) the individual is employed by an employer

who offers multiple health benefit plans and the individual elects a different plan during an open enrollment period; (3) a court has ordered that coverage be provided for a spouse or minor child under a covered employee's health benefit plan; (4) (A) in the case of an eligible employee as defined in paragraph (1) of subdivision (f), the carrier cannot produce a written statement from the employer stating that the individual or the person through whom an individual was eligible to be covered as a dependent, prior to declining coverage, was provided with, and signed acknowledgment of, an explicit written notice in boldface type specifying that failure to elect coverage during the initial enrollment period permits the carrier to impose, at the time of the individual's later decision to elect coverage, an exclusion from coverage for a period of 12 months as well as a six-month preexisting condition exclusion unless the individual meets the criteria specified in paragraph (1), (2), or (3); (B) in the case of an eligible employee who is a guaranteed association member, the plan cannot produce a written statement from the guaranteed association stating that the association sent a written notice in boldface type to all association members at their last known address prior to the initial enrollment period informing members that failure to elect coverage during the initial enrollment period permits the plan to impose, at the time of the member's later decision to elect coverage, an exclusion from coverage for a period of 12 months as well as a six-month preexisting condition exclusion unless the member can demonstrate that he or she meets the requirements of subparagraphs (A), (C), and (D) of paragraph (1) or paragraph (2) or (3); or (C) in the case of an employer or person who is not a member of an association, was eligible to purchase coverage through a guaranteed association, and did not do so, and would not be eligible to purchase guaranteed coverage unless purchased through a guaranteed association, the employer or person can demonstrate that he or she meets the requirements of subparagraphs (A), (C), and (D) of paragraph (1), or paragraph (2) or (3), or that he or she recently had a change in status that would make him or her eligible and that application for coverage was made within 30 days of the change; (5) the individual is an employee or dependent who meets the criteria described in paragraph (1) and was under a COBRA continuation provision and the coverage under that provision has been exhausted. For purposes of this section, the definition of "COBRA" set forth in subdivision (e) of Section 1373.621 of the Health and Safety Code shall apply; or (6) the individual is a dependent of an enrolled eligible employee who has lost or will lose his or her no share-of-cost Medi-Cal coverage and requests enrollment within 30 days after notification of this loss of coverage.

(m) "New business" means a health benefit plan issued to a small employer that is not the carrier's in force business.

(n) "Participating carrier" means a carrier that has entered into a contract with the program to provide health benefits coverage under this part.

(o) "Plan of operation" means the plan of operation of the fund, including articles, bylaws and operating rules adopted by the fund pursuant to Article 3 (commencing with Section 10719).

(p) "Program" means the Health Insurance Plan of California.

(q) "Preexisting condition provision" means a policy provision that excludes coverage for charges or expenses incurred during a specified period following the insured's effective date of coverage, as to a condition for which medical advice, diagnosis, care, or treatment was recommended or received during a specified period immediately preceding the effective date of coverage.

(r) "Creditable coverage" means:

(1) Any individual or group policy, contract, or program, that is written or administered by a disability insurer, health care service plan, fraternal benefits society, self-insured employer plan, or any other entity, in this state or elsewhere, and that arranges or provides medical, hospital, and surgical coverage not designed to supplement other private or governmental plans. The term includes continuation or conversion coverage but does not include accident only, credit, coverage for onsite medical clinics, disability income, Medicare supplement, long-term care, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(2) The federal Medicare program pursuant to Title XVIII of the Social Security Act.

(3) The medicaid program pursuant to Title XIX of the Social Security Act.

(4) Any other publicly sponsored program, provided in this state or elsewhere, of medical, hospital, and surgical care.

(5) 10 U.S.C.A. Chapter 55 (commencing with Section 1071) (Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)).

(6) A medical care program of the Indian Health Service or of a tribal organization.

(7) A state health benefits risk pool.

(8) A health plan offered under 5 U.S.C.A. Chapter 89 (commencing with Section 8901) (Federal Employees Health Benefits Program (FEHBP)).

(9) A public health plan as defined in federal regulations authorized by Section 2701(c)(1)(I) of the Public Health Service Act, as amended by Public Law 104-191, the Health Insurance Portability and Accountability Act of 1996.

(10) A health benefit plan under Section 5(e) of the Peace Corps Act (22 U.S.C.A. Sec. 2504(e)).

(11) Any other creditable coverage as defined by subdivision (c) of Section 2701 of Title XXVII of the federal Public Health Services Act (42 U.S.C. Sec. 300gg(c)).

(s) "Rating period" means the period for which premium rates established by a carrier are in effect and shall be no less than six months.

(t) "Risk adjusted employee risk rate" means the rate determined for an eligible employee of a small employer in a particular risk category after applying the risk adjustment factor.

(u) "Risk adjustment factor" means the percent adjustment to be applied equally to each standard employee risk rate for a particular small employer, based upon any expected deviations from standard claims. This factor may not be more than 120 percent or less than 80 percent until July 1, 1996. Effective July 1, 1996, this factor may not be more than 110 percent or less than 90 percent.

(v) "Risk category" means the following characteristics of an eligible employee: age, geographic region, and family size of the employee, plus the benefit plan design selected by the small employer.

(1) No more than the following age categories may be used in determining premium rates:

Under 30
30–39
40–49
50–54
55–59
60–64
65 and over

However, for the 65 and over age category, separate premium rates may be specified depending upon whether coverage under the health benefit plan will be primary or secondary to benefits provided by the federal Medicare program pursuant to Title XVIII of the federal Social Security Act.

(2) Small employer carriers shall base rates to small employers using no more than the following family size categories:

(A) Single.
(B) Married couple.
(C) One adult and child or children.
(D) Married couple and child or children.

(3) (A) In determining rates for small employers, a carrier that operates statewide shall use no more than nine geographic regions in the state, have no region smaller than an area in which the first three digits of all its ZIP Codes are in common within a county and shall divide no county into more than two regions. Carriers shall be deemed to be operating statewide if their coverage area includes 90 percent or more of the state's population. Geographic regions

established pursuant to this section shall, as a group, cover the entire state, and the area encompassed in a geographic region shall be separate and distinct from areas encompassed in other geographic regions. Geographic regions may be noncontiguous.

(B) In determining rates for small employers, a carrier that does not operate statewide shall use no more than the number of geographic regions in the state than is determined by the following formula: the population, as determined in the last federal census, of all counties which are included in their entirety in a carrier's service area divided by the total population of the state, as determined in the last federal census, multiplied by nine. The resulting number shall be rounded to the nearest whole integer. No region may be smaller than an area in which the first three digits of all its ZIP Codes are in common within a county and no county may be divided into more than two regions. The area encompassed in a geographic region shall be separate and distinct from areas encompassed in other geographic regions. Geographic regions may be noncontiguous. No carrier shall have less than one geographic area.

(w) "Small employer" means either of the following:

(1) Any person, proprietary or nonprofit firm, corporation, partnership, public agency, or association that is actively engaged in business or service that, on at least 50 percent of its working days during the preceding calendar quarter, or preceding calendar year, employed at least two, but not more than 50, eligible employees, the majority of whom were employed within this state, that was not formed primarily for purposes of buying health insurance and in which a bona fide employer-employee relationship exists. In determining whether to apply the calendar quarter or calendar year test, the insurer shall use the test that ensures eligibility if only one test would establish eligibility. However, for purposes of subdivisions (b) and (h) of Section 10705, the definition shall include employers with at least three eligible employees until July 1, 1997, and two eligible employees thereafter. In determining the number of eligible employees, companies that are affiliated companies and that are eligible to file a combined income tax return for purposes of state taxation shall be considered one employer. Subsequent to the issuance of a health benefit plan to a small employer pursuant to this chapter, and for the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided, provisions of this chapter that apply to a small employer shall continue to apply until the health benefit plan anniversary following the date the employer no longer meets the requirements of this definition. It includes any small employer as defined in this paragraph who purchases coverage through a guaranteed association, and any employer purchasing coverage for employees through a guaranteed association.

(2) Any guaranteed association, as defined in subdivision (y), that purchases health coverage for members of the association.

(x) "Standard employee risk rate" means the rate applicable to an eligible employee in a particular risk category in a small employer group.

(y) "Guaranteed association" means a nonprofit organization comprised of a group of individuals or employers who associate based solely on participation in a specified profession or industry, accepting for membership any individual or employer meeting its membership criteria which (1) includes one or more small employers as defined in paragraph (1) of subdivision (w), (2) does not condition membership directly or indirectly on the health or claims history of any person, (3) uses membership dues solely for and in consideration of the membership and membership benefits, except that the amount of the dues shall not depend on whether the member applies for or purchases insurance offered by the association, (4) is organized and maintained in good faith for purposes unrelated to insurance, (5) has been in active existence on January 1, 1992, and for at least five years prior to that date, (6) has been offering health insurance to its members for at least five years prior to January 1, 1992, (7) has a constitution and bylaws, or other analogous governing documents that provide for election of the governing board of the association by its members, (8) offers any benefit plan design that is purchased to all individual members and employer members in this state, (9) includes any member choosing to enroll in the benefit plan design offered to the association provided that the member has agreed to make the required premium payments, and (10) covers at least 1,000 persons with the carrier with which it contracts. The requirement of 1,000 persons may be met if component chapters of a statewide association contracting separately with the same carrier cover at least 1,000 persons in the aggregate.

This subdivision applies regardless of whether a master policy by an admitted insurer is delivered directly to the association or a trust formed for or sponsored by an association to administer benefits for association members.

For purposes of this subdivision, an association formed by a merger of two or more associations after January 1, 1992, and otherwise meeting the criteria of this subdivision shall be deemed to have been in active existence on January 1, 1992, if its predecessor organizations had been in active existence on January 1, 1992, and for at least five years prior to that date and otherwise met the criteria of this subdivision.

(z) "Members of a guaranteed association" means any individual or employer meeting the association's membership criteria if that person is a member of the association and chooses to purchase health coverage through the association. At the association's discretion, it may also include employees of association members, association staff, retired members, retired employees of members, and surviving spouses and dependents of deceased members. However, if an association chooses to include those persons as members of the

guaranteed association, the association must so elect in advance of purchasing coverage from a plan. Health plans may require an association to adhere to the membership composition it selects for up to 12 months.

(aa) "Affiliation period" means a period that, under the terms of the health benefit plan, must expire before health care services under the plan become effective.

SEC. 118. Section 10841 of the Insurance Code is amended to read:

10841. (a) A purchasing alliance shall comply with all requirements pertaining to the underwriting, rating and renewal practices for small employers, pursuant to subdivisions (a) and (b) of Section 1357.12 of the Health and Safety Code and subdivisions (a) and (b) of Section 10714, and subdivision (f) of Section 1357.03 of the Health and Safety Code.

(b) A purchasing alliance shall comply with all requirements pertaining to the marketing practices for small employers who participate in the purchasing alliance, pursuant to subdivision (d) of Section 1357.03 of the Health and Safety Code and subdivisions (f) and (j) of Section 10705.

(c) A purchasing alliance shall comply with all requirements pertaining to the participation requirements for small employers who participate in the purchasing alliance, pursuant to subdivision (b) of Section 1357.03 of the Health and Safety Code and Section 10706. A carrier participating in a purchasing alliance shall be deemed to be in compliance with this requirement.

SEC. 119. Section 14029 of the Insurance Code is amended to read:

14029. (a) The business of each licensee shall be operated under the active direction, control, charge, or management, in this state, of the licensee, if the licensee is qualified, or the person who has qualified to act as the licensee's manager, if the licensee is not qualified.

(b) No person shall act as a manager of a licensee until he or she has complied with each of the following:

(1) Demonstrated his or her qualifications by a written or oral examination, or a combination of both, if required by the commissioner.

(2) Made a satisfactory showing to the commissioner that he or she has the qualifications prescribed by Section 14025 and that none of the facts stated in Section 14028 exist as to him or her.

(c) If the manager, who has qualified as provided in this section, ceases for any reason whatsoever to be connected with the licensee to whom the license is issued, the licensee shall notify the commissioner in writing 30 days from the cessation. If notice is given, the license shall remain in force for a reasonable length of time to be determined by the rules of the commissioner pending the qualifications, as provided in this chapter, of another manager. If the

licensee fails to notify the commissioner within the 30-day period, his or her license shall be subject to suspension or revocation and may be reinstated only upon the filing of an application for reinstatement, payment of the reinstatement fee, if any is due, and the qualification of a manager as provided herein.

(d) Every manager shall renew his or her authority by satisfying the requirements of Article 8 (commencing with Section 14090).

SEC. 120. Section 1295.5 of the Labor Code is amended to read:

1295.5. (a) 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 both (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. 121. Section 1776 of the Labor Code, as amended by Section 3 of Chapter 757 of the Statutes of 1997, 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.

(j) This section shall become operative January 1, 2003.

SEC. 122. Section 1813 of the Labor Code, as amended by Section 5 of Chapter 757 of the Statutes of 1997, 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 the 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 or her under the contract.

This section shall become operative January 1, 2003.

SEC. 123. Section 3710.3 of the Labor Code is amended to read:

3710.3. Whenever a stop order has been issued pursuant to Section 3710.1 to a motor carrier of property subject to the jurisdiction and control of the Department of Motor Vehicles or to a household goods carrier, passenger stage corporation, or charter-party carrier of passengers subject to the jurisdiction and control of the Public Utilities Commission, the director shall transmit the stop order to the Public Utilities Commission or the Department of Motor Vehicles, whichever has jurisdiction over the affected carrier, within 30 days.

SEC. 124. Section 4064 of the Labor Code is amended to read:

4064. (a) The employer shall be liable for the cost of each reasonable and necessary comprehensive medical-legal evaluation obtained by the employee pursuant to Sections 4060, 4061, and 4062. Each comprehensive medical-legal evaluation shall address all contested medical issues arising from all injuries reported on one or

more claim forms. An unrepresented employee who has already obtained a medical evaluation under Section 4060, 4061, or 4062 shall not obtain any additional comprehensive medical evaluations at the employer's expense for the same disputed medical issue.

(b) Subject to Section 4906, if an employer files an application for adjudication and the employee is unrepresented at the time the application is filed, the employer shall be liable for any attorney's fees incurred by the employee in connection with the application for adjudication.

(c) The employer shall not be liable for the cost of any comprehensive medical evaluations obtained by the employee other than those authorized pursuant to Sections 4060, 4061, and 4062. However, no party is prohibited from obtaining any medical evaluation or consultation at the party's own expense. In no event shall an employer or employee be liable for an evaluation obtained in violation of subdivision (b) of Section 4060. All comprehensive medical evaluations obtained by any party shall be admissible in any proceeding before the appeals board except as provided in subdivisions (d) and (m) of Section 4061 and subdivisions (b) and (e) of Section 4062.

SEC. 125. Section 4600.3 of the Labor Code is amended to read:

4600.3. (a) (1) Notwithstanding Section 4600, if a self-insured employer, group of self-insured employers, or the insurer of an employer contracts with at least two health care organizations certified pursuant to Section 4600.5 for health care services required by this article to be provided to injured employees, the employees subject to the contract shall receive medical services in the manner prescribed in the contract, provided that the employee may choose to be treated by a personal physician or personal chiropractor he or she has designated prior to the injury, in which case the employee shall not be treated by the health care organization. Every employee shall be given an affirmative choice at the time of employment and at least annually thereafter to designate or change the designation of a health care organization or a personal physician or personal chiropractor. The choice shall be memorialized in writing and maintained in the employee's personnel records. The employee who has designated a personal physician or personal chiropractor may change physicians at any time prior to the injury. Any employee who fails to choose between health care organizations or to designate a personal physician or personal chiropractor shall be treated by the health care organization selected by the employer.

(2) Each contract described in paragraph (1) shall comply with the certification standards provided in Section 4600.5, and shall provide all medical, surgical, chiropractic, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatus, including artificial members, that is reasonably required to cure or relieve the effects of the injury, as required by this division, without any payment by the employee of

deductibles, copayments, or any share of the premium. However, an employee may receive immediate emergency medical treatment that is compensable from a medical service or health care provider who is not a member of the health care organization.

(3) The employee shall be allowed to choose from at least two health care organizations, of which at least one must be compensated on a fee-for-service basis. If one or more of the health care organizations offered by the employer is the workers' compensation insurer that covers the employee or is an entity that controls or is controlled by that insurer, as defined by Section 1215 of the Insurance Code, the employee shall be allowed to choose from at least one additional health care organization, that is not the workers' compensation insurer that covers the employee, or entities that control or are controlled by that insurer, of which at least one must be compensated on a fee-for-service basis.

(4) Insurers of employers, a group of self-insured employers, or self-insured employers who contract with a health care organization for medical services shall give notice to employees of eligible medical service providers and any other information regarding the contract and manner of receiving medical services as the administrative director may prescribe. Employees shall be duly notified that if they choose to receive care from the health care organization they must receive treatment for all occupational injuries and illnesses as prescribed by this section.

(b) Notwithstanding subdivision (a), no employer that is required to bargain with an exclusive or certified bargaining agent that represents employees of the employer in accordance with state or federal employer-employee relations law shall contract with a health care organization for purposes of Section 4600.5 with regard to employees whom the bargaining agent is recognized or certified to represent for collective bargaining purposes pursuant to state or federal employer-employee relations law, unless authorized to do so by mutual agreement between the bargaining agent and the employer. If the collective bargaining agreement is subject to the National Labor Relations Act, the employer may contract with a health care organization for purposes of Section 4600.5 at any time when the employer and bargaining agent have bargained to impasse to the extent required by federal law.

(c) (1) When an employee is not receiving or is not eligible to receive health care coverage for nonoccupational injuries or illnesses provided by the employer, if 90 days from the date the injury is reported the employee who has been receiving treatment from a health care organization or his or her physician, chiropractor, or other agent notifies his or her employer in writing that he or she desires to stop treatment by the health care organization, he or she shall have the right to be treated by a physician or at a facility of his or her own choosing within a reasonable geographic area.

(2) When an employee is receiving or is eligible to receive health care coverage for nonoccupational injuries or illnesses provided by the employer, and has agreed to receive care for occupational injuries and illnesses from a health care organization provided by the employer, the employee may be treated for occupational injuries and diseases by a physician of his or her own choice or at a facility of his or her own choice within a reasonable geographic area if the employee or his or her physician, chiropractor, or other agent notifies his or her employer in writing only after 180 days from the date the injury was reported, or upon the date of contract renewal or open enrollment of the health care organization, whichever occurs first, but in no case until 90 days from the date the injury was reported.

(3) If the employee is receiving or is eligible to receive health care coverage for nonoccupational injuries or illnesses provided by the employer, and his or her physician or chiropractor for nonoccupational illnesses or injuries is participating in at least one of the health care organizations offered to the employee, and he or she has chosen treatment by one of these health care organizations for occupational injuries or illnesses, the employee may be treated by a physician of his or her own choice or at a facility of his or her own choice within a reasonable geographic area if the employee or his or her physician, chiropractor, or other agent notifies his or her employer in writing only after 365 days from the date the injury was reported, or upon the date of contract renewal or open enrollment, whichever occurs first, but in no case until 90 days from the date the injury was reported.

(4) For purposes of this subdivision, an employer shall be deemed to provide health care coverage for nonoccupational injuries and illnesses if the employer pays more than one-half the costs of the coverage, or if the plan is established pursuant to collective bargaining.

(d) An employee and employer may agree to other forms of therapy pursuant to Section 3209.7.

(e) An employee enrolled in a health care organization shall have the right to no less than one change of physician on request, and shall be given a choice of physicians affiliated with the health care organization. The health care organization shall provide the employee a choice of participating physicians within five days of receiving a request. In addition, the employee shall have the right to a second opinion from a participating physician on a matter pertaining to diagnosis from a participating physician.

(f) Nothing in this section or Section 4600.5 shall be construed to prohibit a self-insured employer, a group of self-insured employers, or insurer from engaging in any activities permitted by Section 4600.

(g) Notwithstanding subdivision (c), in the event that the employer, group of employers, or the employer's workers' compensation insurer no longer contracts with the health care organization that has been treating an injured employee, the

employee may continue treatment provided or arranged by the health care organization. If the employee does not choose to continue treatment by the health care organization, the employer may control the employee's treatment for 30 days from the date the injury was reported. After that period, the employee may be treated by a physician of his or her own choice or at a facility of his or her own choice within a reasonable geographic area.

SEC. 126. Section 5433 of the Labor Code is amended to read:

5433. (a) Any advertisement or other device designed to produce leads based on a response from a person to file a workers' compensation claim or to engage or consult counsel or a medical care provider or clinic shall disclose that an agent may contact the individual if that is the fact. In addition, an individual who makes contact with a person as a result of acquiring that individual's name from a lead generating device shall disclose that fact in the initial contact with that person.

(b) No person shall solicit persons to file a workers' compensation claim or to engage or consult counsel or a medical care provider or clinic to consider a workers' compensation claim through the use of a true or fictitious name which is deceptive or misleading with regard to the status, character, or proprietary or representative capacity of the entity or person, or to the true purpose of the advertisement.

(c) For purposes of this section, an advertisement includes a solicitation in any newspaper, magazine, circular, form letter, or open publication, published, distributed, or circulated in this state, or on any billboard, card, label, transit advertisement, or other written advertising medium, and includes envelopes, stationery, business cards, or other material designed to encourage the filing of a workers' compensation claim.

(d) Advertisements shall not employ words, initials, letters, symbols, or other devices which are so similar to those used by governmental agencies, a nonprofit or charitable institution, or other entity that they could have the capacity or tendency to mislead the public. Examples of misleading materials include, but are not limited to, those that imply any of the following:

(1) The advertiser is in some way provided by or is endorsed by a governmental agency or charitable institution.

(2) The advertisement is the same as, is connected with, or endorsed by a governmental agency or charitable institution.

(e) Advertisements may not use the name of a state or political subdivision thereof in an advertising solicitation.

(f) Advertisements may not use any name, service mark, slogan, symbol, or any device in any manner which implies that the advertiser, or any person or entity associated with the advertiser, or that any agency who may call upon the person in response to the advertisement, is connected with a governmental agency.

(g) Advertisements may not imply that the reader, listener, or viewer may lose a right or privilege or benefits under federal, state, or local law if he or she fails to respond to the advertisement.

SEC. 127. Section 1011 of the Military and Veterans Code is amended to read:

1011. (a) There is in the department a Veterans' Home of California, Yountville, situated in Yountville, Napa County.

(b) (1) The department may establish and construct a second home that shall be situated in the County of Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, or Ventura. The home may be located on one or more sites. The department shall operate the second home concurrently with the first home.

(2) The initial site is the Veterans' Home of California, Barstow, situated in Barstow, San Bernardino County.

(3) When completed, the second site shall be the Veterans' Home of California, Chula Vista, situated in Chula Vista, San Diego County, pursuant to the recommendations made by the commission established pursuant to Section 1011.5.

(4) When completed, the third site shall be the Veterans' Home of California, Lancaster, situated in Lancaster, Los Angeles County, pursuant to the recommendations made by the commission established pursuant to Section 1011.5.

(5) When completed, the fourth site shall be the Veterans' Home of California, Ventura, situated in the community of Saticoy, Ventura County.

(6) There shall be an administrator for, and located at, each site of the southern California home.

(7) The department may complete any preapplication process necessary with the United States Department of Veterans Affairs for construction of the second home.

(c) The Legislature hereby finds and declares that the second home is a new state function. The department may perform any or all work in operating the second home by independent contractors, except the overall administration and management of the home. Any and all actions of the department taken before September 17, 1996, that are consistent with this subdivision are hereby ratified and confirmed, it having at all times been the intent of the Legislature that the department be so authorized.

SEC. 128-129. Section 290 of the Penal Code is amended to read:

290. (a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within California, shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or

community college if he or she is residing, or if he or she has no residence, is located upon the campus or in any of its facilities, within five working days of coming into any city, county, or city and county in which he or she temporarily resides, or, if he or she has no residence, is located.

(B) If the person who is registering has no residence address, he or she shall update his or her registration no less than once every 90 days in addition to the requirement in subparagraph (A), on a form as may be required by the Department of Justice, with the entity or entities described in subparagraph (A) in whose jurisdiction he or she is located at the time he or she is updating the registration.

(C) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A), including, verifying his or her name and address, or temporary location, on a form as may be required by the Department of Justice.

(D) In addition, every person who is a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address every 90 days in a manner established by the Department of Justice.

(E) No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section.

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been, or hereafter is convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, 266j, 267, 269, 285, 286, 288, 288a, 288.5, or 289, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been, or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been, or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division

6 of the Welfare and Institutions Code or any person who has been found guilty in the guilt phase of a trial for an offense for which registration is required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial.

(D) Any person who, since July 1, 1944, has been, or hereafter is convicted in any other court, including any state, federal, or military court, of any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A) or any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(F) (i) Notwithstanding any other subdivision, a person who was convicted before January 1, 1976, under subdivision (a) of Section 286, or Section 288a, shall not be required to register pursuant to this section for that conviction if the conviction was for conduct between consenting adults that was decriminalized by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes of 1976. The Department of Justice shall remove that person from the Sex Offender Registry, and the person is discharged from his or her duty to register pursuant to the following procedure:

(I) The person submits to the Department of Justice official documentary evidence, including court records or police reports, that demonstrates that the person's conviction pursuant to either of those sections was for conduct between consenting adults that was decriminalized; or

(II) The person submits to the department a declaration stating that the person's conviction pursuant to either of those sections was for consensual conduct between adults that has been decriminalized. The declaration shall be confidential and not a public record, and shall include the person's name, address, telephone number, date of birth, and a summary of the circumstances leading to the conviction, including the date of the conviction and county of the occurrence.

(III) The department shall determine whether the person's conviction was for conduct between consensual adults that has been decriminalized. If the conviction was for consensual conduct between adults that has been decriminalized, and the person has no other offenses for which he or she is required to register pursuant to this section, the department shall, within 60 days of receipt of those documents, notify the person that he or she is relieved of the duty to register, and shall notify the local law enforcement agency with

which the person is registered that he or she has been relieved of the duty to register. The local law enforcement agency shall remove the person's registration from its files within 30 days of receipt of notification. If the documentary or other evidence submitted is insufficient to establish the person's claim, the department shall, within 60 days of receipt of those documents, notify the person that his or her claim cannot be established, and that the person shall continue to register pursuant to this section. The department shall provide, upon the person's request, any information relied upon by the department in making its determination that the person shall continue to register pursuant to this section. Any person whose claim has been denied by the department pursuant to this clause may petition the court to appeal the department's denial of the person's claim.

(ii) On or before July 1, 1998, the department shall make a report to the Legislature concerning the status of persons who may come under the provisions of this subparagraph, including the number of persons who were convicted before January 1, 1976, under subdivision (a) of Section 286 or Section 288a and are required to register under this section, the average age of these persons, the number of these persons who have any subsequent convictions for a registerable sex offense, and the number of these persons who have sought successfully or unsuccessfully to be relieved of their duty to register under this section.

(b) (1) Any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice.

(2) The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to

the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement shall retain one copy.

(c) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation or discharged upon payment of a fine shall, prior to release or discharge, be informed of the duty to register under this section by the probation department, and a probation officer shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The probation officer shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraph (3), shall be subject to registration under the procedures of this section.

(3) Any person described in this subdivision who committed an offense in violation of any of the following provisions shall be required to register pursuant to this section:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.

(C) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(4) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration under this subdivision shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) (1) On or after January 1, 1998, upon incarceration, placement, or commitment, or prior to release on probation, any person who is required to register under this section shall preregister. The preregistering official shall be the admitting officer at the place of incarceration, placement, or commitment, or the probation officer if the person is to be released on probation. The preregistration shall consist of both of the following:

(A) A preregistration statement in writing, signed by the person, giving information that may be required by the Department of Justice.

(B) The fingerprints and photograph of the person.

(2) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(3) A person described in paragraph (2) of subdivision (a) shall register, or reregister if the person has previously registered, upon release from incarceration, placement, or commitment, pursuant to paragraph (1) of subdivision (a). The registration shall consist of all of the following:

(A) A statement in writing signed by the person, giving information as may be required by the Department of Justice.

(B) The fingerprints and photograph of the person.

(C) The license plate number of any vehicle owned by, regularly driven by, or registered in the name of, the person.

(D) Notice to the person that, in addition to the requirements of paragraph (4), he or she may have a duty to register in any other state where he or she may relocate.

(4) Within three days thereafter, the preregistering official or the registering law enforcement agency or agencies shall forward the

statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(f) (1) If any person who is required to register pursuant to this section changes his or her residence address, the person shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address. The law enforcement agency or agencies shall, within three days after receipt of this information, forward a copy of the change of address information to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence.

(2) If any person who is required to register pursuant to this section changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this information to the Department of Justice within three days of its receipt.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Except as provided in paragraph (5), any person who is required to register under this section based on a felony conviction who willfully violates any requirement of this section or who has a prior conviction for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(4) If, after discharge from parole, the person is convicted of a felony as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of

a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(5) Any person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, fails to verify his or her registration every 90 days as required pursuant to subparagraph (D) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) In addition to any other penalty imposed under this subdivision, any person who is required pursuant to subparagraph (B) of paragraph (1) of subdivision (a) to update his or her registration every 90 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subdivision (B) of paragraph (1) of subdivision (a) shall update their registration every 90 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months.

(7) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, "parole authority" has the same meaning as described in Section 3000.

(i) Except as provided in subdivisions (m) and (n) and Section 290.4, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, "mentally disordered sex offender" includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(*l*) (1) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to five working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(2) Every person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense against the penalties prescribed by paragraph (5) of subdivision (g).

(m) (1) When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency may, notwithstanding any other provision of law, provide any of the information specified in paragraph (2) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

(A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.

(B) Other community members at risk.

(2) The information that may be disclosed pursuant to this section includes the following:

(A) The offender's full name.

(B) The offender's known aliases.

(C) The offender's gender.

(D) The offender's race.

(E) The offender's physical description.

(F) The offender's photograph.

(G) The offender's date of birth.

(H) Crimes resulting in registration under this section.

(I) The offender's address, which shall be verified prior to publication.

(J) Description and license plate number of offender's vehicles or vehicles the offender is known to drive.

(K) Type of victim targeted by the offender.

(L) Relevant parole or probation conditions, such as one prohibiting contact with children.

(M) Dates of crimes resulting in classification under this section.

(N) Date of release from confinement.

However, information disclosed pursuant to this subdivision shall not include information that would identify the victim.

(3) If a law enforcement agency discloses information pursuant to this subdivision, it shall include, with the disclosure, a statement that the purpose of the release of the information is to allow members of the public to protect themselves and their children from sex offenders.

(4) For purposes of this section, "likely to encounter" means both of the following:

(A) That the agencies, organizations, or other community members are in a location or in close proximity to a location where the offender lives or is employed, or that the offender visits or is likely to visit on a regular basis.

(B) The types of interaction that ordinarily occur at that location and other circumstances indicate that contact with the offender is reasonably probable.

(5) For purposes of this section, "reasonably suspects" means that it is objectively reasonable for a peace officer to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect that a child or other person is at risk.

(6) For purposes of this section, "at risk" means a person is or may be exposed to a risk of becoming a victim of a sex offense committed by the offender.

(7) A law enforcement agency may continue to disclose information about an offender under this subdivision for as long as the offender is included in Section 290.4.

(n) In addition to the procedures set forth in this section, a designated law enforcement entity may advise the public of the presence of high-risk sex offenders in its community pursuant to this subdivision.

(1) For purposes of this subdivision:

(A) A high-risk sex offender is a person who has been convicted of an offense specified in paragraph (1) of subdivision (a) of Section 290.4 and meets any of the following criteria:

(i) Has been convicted of three or more violent sex offenses, at least two of which were brought and tried separately.

(ii) Has been convicted of two violent sex offenses and one or more violent nonsex offenses, at least two of which were brought and tried separately.

(iii) Has been convicted of one violent sex offense and two or more violent nonsex offenses, at least two of which were brought and tried separately.

(iv) Has been convicted of either two violent sex offenses or one violent sex offense and one violent nonsex offense, at least two of which were brought and tried separately, and has been arrested on separate occasions for three or more violent sex offenses, violent nonsex offenses, or associated offenses.

(v) Has been adjudicated a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(B) A violent sex offense means any offense defined in Section 220, except attempt to commit mayhem, 261, 264.1, 286, 288, 288a, 288.5, 289, or 647.6, or infliction of great bodily injury during the commission of a sex offense, as provided in Section 12022.8.

(C) A violent nonsex offense means any offense defined in Section 187, subdivision (a) of Section 192, or Section 203, 206, 207, or 236, provided that the offense is a felony, subdivision (a) of Section 273a, Section 273d or 451, or attempted murder, as defined in Sections 187 and 664.

(D) An associated offense means any offense defined in Section 243.4, provided that the offense is a felony, Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, or 314, Section 459, provided the offense is of the first degree, Section 597 or 646.9, subdivision (d), (h), or (i) of Section 647, Section 653m, or infliction of great bodily injury during the commission of a felony, as defined in Section 12022.7.

(E) For purposes of subparagraphs (B) to (D), inclusive, an arrest or conviction for the statutory predecessor of any of the enumerated offenses, or an arrest or conviction in any other jurisdiction for any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in those subparagraphs, is to be considered in determining whether an offender is a high-risk sex offender.

(F) For purposes of subparagraphs (B) to (D), inclusive, an arrest as a juvenile or an adjudication as a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code for any of the offenses described in those subparagraphs is to be considered in determining whether an offender is a high-risk sex offender.

(G) Notwithstanding subparagraphs (A) to (D), inclusive, an offender shall not be considered to be a high-risk sex offender if either of the following apply:

(i) The offender's most recent conviction or arrest for an offense described in subparagraphs (B) to (D), inclusive, occurred more than five years prior to the high-risk assessment by the Department of Justice, excluding periods of confinement.

(ii) The offender notifies the Department of Justice, on a form approved by the department and available at any sheriff's office, that

he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a), and the department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

(H) "Confinement" means confinement in a jail, prison, school, road camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, or confinement in a facility designated by the Director of Mental Health to which the offender was committed as a sexually violent predator under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(I) "Designated law enforcement entity" means a municipal police department, sheriff's department, district attorney's office, county probation department, Department of Justice, Department of Corrections, Department of the Youth Authority, Department of the California Highway Patrol, or the police department of any campus of the University of California, the California State University, or any community college.

(2) The Department of Justice shall continually search the records provided to it pursuant to subdivision (b) and identify, on the basis of those records, high-risk sex offenders. Four times each year, the department shall provide to each chief of police and sheriff in the state, and to any other designated law enforcement entity upon request, the following information regarding each identified high-risk sexual offender: full name; known aliases; gender; race; physical description; photograph; date of birth; and crimes resulting in classification under this section.

(3) The Department of Justice and any designated law enforcement entity to which notice has been given pursuant to paragraph (2) may cause to be made public, by whatever means the agency deems necessary to ensure the public safety, based upon information available to the agency concerning a specific person, including, but not limited to, the information described in paragraph (2); the offender's address, which shall be verified prior to publication; description and license plate number of the offender's vehicles or vehicles the offender is known to drive; type of victim targeted by the offender; relevant parole or probation conditions, such as one prohibiting contact with children; dates of crimes resulting in classification under this section; and date of release from confinement; but excluding information that would identify the victim.

(o) Agencies disseminating information to the public pursuant to Section 290.4 shall maintain records of those persons requesting to view the CD-ROM or other electronic media for a minimum of five years. Agencies disseminating information to the public pursuant to

subdivision (n) shall maintain records of the means and dates of dissemination for a minimum of five years.

(p) Law enforcement agencies and employees of law enforcement agencies shall be immune from liability for good faith conduct under this section. For the purposes of this section, "law enforcement agency" means the Attorney General, any district attorney, and any state agency expressly authorized by statute to investigate or prosecute law violators.

(q) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison. Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(r) The registration and public notification provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in this section, regardless of when it was committed.

SEC. 130. Section 290.4 of the Penal Code is amended to read:

290.4. (a) (1) The Department of Justice shall continually compile information as described in paragraph (2) regarding any person required to register under Section 290 for a conviction of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289; Section 220, except assault to commit mayhem; Section 243.4, provided that the offense is a felony; paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261; Section 264.1; Section 266, provided that the offense is a felony; Section 266c, provided that the offense is a felony; Section 266j; Section 267; paragraph (1) of subdivision (b) of Section 286, provided that the offense is a felony; paragraph (2) of subdivision (b), subdivision (c), (d), (f), (g), (i), (j), or (k) of Section 286; Section 288; paragraph (1) of subdivision (b) of Section 288a, provided that the offense is a felony; paragraph (2) of subdivision (b), (c), (d), (f), (g), (i), (j), or (k) of Section 288a; Section 288.5; subdivision (a), (b), (d), (e), (f), (g), or (h) of Section 289, provided that the offense is a felony; subdivision (i) or (j) of Section 289; Section 647.6; or the statutory predecessor of any of these offenses or any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in this section. This requirement shall not be applied to a person whose duty to register has been terminated pursuant to paragraph (5) of subdivision (d) of Section 290, or to a person who has been relieved of his or her duty to register under Section 290.5.

(2) The information shall be categorized by community of residence and ZIP Code. The information shall include the names and known aliases of the person, photograph, a physical description, gender, race, date of birth, the criminal history, and the address, including ZIP Code, in which the person resides, and any other information that the Department of Justice deems relevant, not including information that would identify the victim.

(3) The department shall operate a "900" telephone number that members of the public may call and inquire whether a named individual is listed among those described in this subdivision. The caller shall furnish his or her first name, middle initial, and last name. The department shall ascertain whether a named person reasonably appears to be a person so listed and provide the caller with the information described in paragraph (2), except the department shall not disclose the street address or criminal history of a person listed, except to disclose the ZIP Code area in which the person resides and to describe the specific crimes for which the registrant was required to register. The department shall decide whether the named person reasonably appears to be a person listed, based upon information from the caller providing information that shall include either (A) an exact street address, including apartment number, social security number, California driver's license or identification number, or birth date along with additional information that may include any of the following: name, hair color, eye color, height, weight, distinctive markings, ethnicity, or (B) any combination of at least six of the above listed characteristics if an exact birth date or address is not available. If three of the characteristics provided include ethnicity, hair color, and eye color, a seventh identifying characteristic shall be provided. Any information identifying the victim by name, birth date, address, or relation to the registrant shall be excluded by the department.

(4) (A) On or before July 1, 1997, the department shall provide a CD-ROM or other electronic medium containing the information described in paragraph (2), except the person's street address and criminal history other than the specific crimes for which the person was required to register, for all persons described in paragraph (1) of subdivision (a), and shall distribute the CD-ROM or other electronic medium on a quarterly basis to the sheriff's department in each county, municipal police departments of cities with a population of more than 200,000, and each law enforcement agency listed in subparagraph (I) of paragraph (1) of subdivision (n) of Section 290. These law enforcement agencies may obtain additional copies by purchasing a yearly subscription to the CD-ROM or other electronic medium from the Department of Justice for a yearly subscription fee. The Department of Justice, the sheriff's departments, and the municipal police departments of cities with a population of more than 200,000 shall make, and the other law enforcement agencies may make, the CD-ROM or other electronic

medium available for viewing by the public in accordance with the following: The agency may require that a person applying to view the CD-ROM or other electronic medium express an articulable purpose in order to have access thereto. The applicant shall provide identification in the form of a California driver's license or California identification card, showing the applicant to be at least 18 years of age, and shall sign a statement, on a form provided by the Department of Justice, stating that the applicant is not a registered sex offender, that he or she understands the purpose of the release of information is to allow members of the public to protect themselves and their children from sex offenders, and he or she understands it is unlawful to use information obtained from the CD-ROM or other electronic medium to commit a crime against any registrant or to engage in illegal discrimination or harassment of any registrant. The signed statement shall be maintained in a file in the designated law enforcement agency's office.

(B) The records of persons requesting to view the CD-ROM or other electronic medium are confidential, except that a copy of the applications requesting to view the CD-ROM or other electronic medium may be disclosed to law enforcement agencies for law enforcement purposes.

(C) Any information identifying the victim by name, birth date, address, or relationship to the registrant shall be excluded from the CD-ROM or other electronic medium.

(5) (A) The income from the operation of the "900" telephone number shall be deposited in the Sexual Predator Public Information Account, which is hereby established within the Department of Justice for the purpose of the implementation of this section by the Department of Justice, including all actual and reasonable costs related to establishing and maintaining the information described in subdivision (a) and the CD-ROM or other electronic medium described in this subdivision.

(B) The moneys in the Sexual Predator Public Information Account shall consist of income from the operation of the "900" telephone number program authorized by this section, proceeds of the loan made pursuant to Section 6 of Chapter 867 of the Statutes of 1994, and any other funds made available to the account by the Legislature. Moneys in the account shall be available to the Department of Justice upon appropriation by the Legislature for the purpose specified in subparagraph (A).

(C) When the "900" telephone number is called, a preamble shall be played before charges begin to accrue. The preamble shall run at least the length of time required by federal law and shall provide all of the following information:

(i) Notice that the caller's telephone number will be recorded.

(ii) The charges for use of the "900" telephone number.

(iii) Notice that the caller is required to identify himself or herself to the operator.

(iv) Notice that the caller is required to be 18 years of age or older.

(v) A warning that it is illegal to use information obtained through the "900" telephone number to commit a crime against any registrant or to engage in illegal discrimination or harassment against any registrant.

(vi) Notice that the caller is required to have the birth date, California driver's license or identification number, social security number, address, or other identifying information regarding the person about whom information is sought in order to achieve a positive identification of that person.

(vii) A statement that the number is not a crime hotline and that any suspected criminal activity should be reported to local authorities.

(viii) A statement that the caller should have a reasonable suspicion that a person is at risk.

(D) The Department of Justice shall expend no more than six hundred thousand dollars ($600,000) per year from any moneys appropriated by the Legislature from the account.

(b) (1) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to, any other punishment, by a five-year term of imprisonment in the state prison.

(2) Any person who, without authorization, uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(c) The record of the compilation of offender information on each CD-ROM or other electronic medium distributed pursuant to this section only shall be used for law enforcement purposes and the public safety purposes specified in this section and Section 290. This record shall not be distributed or removed from the custody of the law enforcement agency that is authorized to retain it. Information obtained from this record shall be disclosed to a member of the public only as provided in this section or Section 290, or any other statute expressly authorizing the disclosure.

Any person who copies, distributes, discloses, or receives this record or information from it, except as authorized by law, is guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed six months or by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. This subdivision does not apply to a law enforcement officer who makes a copy as part of his or her official duties in the course of a criminal investigation, court case, or as otherwise authorized by subdivision (n) of Section 290. This subdivision shall not prohibit copying information by handwriting.

Notwithstanding Section 6254.5 of the Government Code, disclosure of information pursuant to this section is not a waiver of

exemptions under Chapter 3.5 (commencing with Section 6250) of Title 1 of Division 7 of the Government Code and does not affect other statutory restrictions on disclosure in other situations.

(d) Unauthorized removal or destruction of the CD-ROM or other electronic medium from the offices of any law enforcement agency is a misdemeanor, punishable by imprisonment in a county jail not to exceed one year, or by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(e) (1) A person is authorized to use information disclosed pursuant to this section only to protect a person at risk.

This section shall not affect authorized access to, or use of, information pursuant to, among other provisions, Sections 11105 and 11105.3 of this code, Section 226.55 of the Civil Code, Sections 777.5 and 14409.2 of the Financial Code, Sections 1522.01 and 1596.871 of the Health and Safety Code, or Section 432.7 of the Labor Code.

(2) Except as authorized under paragraph (1) or any other provision of law, use of any information, for purposes relating to any of the following, and that is disclosed pursuant to this section, is prohibited:

(A) Health insurance.

(B) Insurance.

(C) Loans.

(D) Credit.

(E) Employment.

(F) Education, scholarships, or fellowships.

(G) Housing or accommodations.

(H) Benefits, privileges, or services provided by any business establishment.

(3) (A) Any use of information disclosed pursuant to this section for purposes other than those provided by paragraph (1) of subdivision (e) or in violation of paragraph (2) of subdivision (e) shall make the user liable for the actual damages, and any amount that may be determined by a jury or a court sitting without a jury, not exceeding three times the amount of actual damage, and not less than two hundred fifty dollars ($250), and attorney's fees, exemplary damages, or a civil penalty not exceeding twenty-five thousand dollars ($25,000).

(B) Whenever there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of misuse of the "900" telephone number in violation of paragraph (2) of subdivision (e), the Attorney General, any district attorney, or city attorney, or any person aggrieved by the misuse of that number is authorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or group of persons responsible for the pattern or practice of misuse. The foregoing remedies shall be independent of any other remedies or procedures that may be available to an aggrieved party

under other provisions of law, including Part 2 (commencing with Section 43) of Division 1 of the Civil Code.

(f) This section does not authorize the publication, distribution, or disclosure of the address of any person about whom information can be published, distributed, or disclosed pursuant to this section.

(g) Community notification shall be governed by subdivisions (m) and (n) of Section 290.

(h) The Department of Justice shall submit to the Legislature an annual report on the operation of the "900" telephone number required by paragraph (3) of subdivision (a) on July 1, 1996, July 1, 1997, and July 1, 1998. The annual report shall include all of the following:

(1) Number of calls received.

(2) Amount of income earned per year through operation of the "900" telephone number.

(3) A detailed outline of the amount of money expended and the manner in which it was expended for purposes of this section.

(4) Number of calls that resulted in an affirmative response and the number of calls that resulted in a negative response with regard to whether a named individual was listed pursuant to subdivision (a).

(5) Number of persons listed pursuant to subdivision (a).

(6) A summary of the success of the "900" telephone number program based upon selected factors.

(i) Any law enforcement agency and any employee thereof is immune from liability for good faith conduct under this section. For the purposes of this section, "law enforcement agency" means the Attorney General, any district attorney, and any state agency expressly authorized by statute to investigate or prosecute law violators.

(j) On or before July 1, 2000, the Department of Justice shall make a report to the Legislature concerning the changes to the operation of the "900" telephone number program made by the amendments to this section by Chapter 908 of the Statutes of 1996. The report shall include all of the following:

(1) Number of calls received by county.

(2) Number of calls that resulted in an affirmative response and the number of calls that resulted in a negative response with regard to whether a named individual was listed pursuant to subdivision (a).

(3) Number of persons listed pursuant to subdivision (a).

(4) Statistical information concerning prosecutions of persons for misuse of the "900" telephone number program, including the outcomes of those prosecutions.

(5) A summary of the success of the "900" telephone number based upon selected factors.

(k) The registration and public notification provisions of this section are applicable to every person described in these sections, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every

offense described in these sections, regardless of when it was committed.

(*l*) No later than December 31, 1998, the Department of Justice shall prepare an informational pamphlet that shall be mailed to any member of the public who makes an inquiry using the "900" telephone number required by this section and who provides an address. The pamphlet shall provide basic information concerning appropriate steps that parents, guardians, and other responsible adults can take to ensure a child is safe from a suspected child molester, including, but not limited to, how to identify suspicious activity by an adult, common facts and myths about child molesters, and how to obtain additional help and information. A notice to callers to the "900" telephone number that they will receive the pamphlet, if an address is provided, shall be included in the preamble required by this section.

(m) This section shall remain operative only until January 1, 2001, and as of that date is repealed unless a later enacted statute, which becomes effective on or before that date, deletes or extends that date.

SEC. 131. Section 629.82 of the Penal Code is amended to read:

629.82. (a) If a peace officer or federal law enforcement officer, while engaged in intercepting wire, electronic digital pager, or electronic cellular telephone communications in the manner authorized by this chapter, intercepts wire, electronic digital pager, or electronic cellular telephone communications relating to crimes other than those specified in the order of authorization, but which are enumerated in subdivision (a) of Section 629.52, (1) the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in Sections 629.74 and 629.76 and (2) the contents and any evidence derived therefrom may be used under Section 629.78 when authorized by a judge if the judge finds, upon subsequent application, that the contents were otherwise intercepted in accordance with the provisions of this chapter. The application shall be made as soon as practicable.

(b) If a peace officer or federal law enforcement officer, while engaged in intercepting wire, electronic digital pager, or electronic cellular telephone communications in the manner authorized by this chapter, intercepts wire, electronic digital pager, or electronic cellular telephone communications relating to crimes other than those specified in the order of authorization, the contents thereof, and evidence derived therefrom, may not be disclosed or used as provided in Sections 629.74 and 629.76, except to prevent the commission of a public offense. The contents and any evidence derived therefrom may not be used under Section 629.78, except where the evidence was obtained through an independent source or inevitably would have been discovered, and the use is authorized by a judge who finds that the contents were intercepted in accordance with this chapter.

(c) The use of the contents of an intercepted wire, electronic digital pager, or electronic cellular telephone communication relating to crimes other than those specified in the order of authorization to obtain a search or arrest warrant entitles the person named in the warrant to notice of the intercepted wire, electronic digital pager, or electronic cellular telephone communication and a copy of the contents thereof that were used to obtain the warrant.

SEC. 132. 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.

(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. 133. Section 1054.2 of the Penal Code is amended to read:

1054.2. (a) (1) Except as provided in paragraph (2), no attorney may disclose or permit to be disclosed to a defendant, members of the

defendant's family, or anyone else, the address or telephone number of a victim or witness whose name is disclosed to the attorney pursuant to subdivision (a) of Section 1054.1, unless specifically permitted to do so by the court after a hearing and a showing of good cause.

(2) Notwithstanding paragraph (1), an attorney may disclose or permit to be disclosed the address or telephone number of a victim or witness to persons employed by the attorney or to persons appointed by the court to assist in the preparation of a defendant's case if that disclosure is required for that preparation. Persons provided this information by an attorney shall be informed by the attorney that further dissemination of the information, except as provided by this section, is prohibited.

(3) Willful violation of this subdivision by an attorney, persons employed by the attorney, or persons appointed by the court is a misdemeanor.

(b) If the defendant is acting as his or her own attorney, the court shall endeavor to protect the address and telephone number of a victim or witness by providing for contact only through a private investigator licensed by the Department of Consumer Affairs and appointed by the court or by imposing other reasonable restrictions, absent a showing of good cause as determined by the court.

SEC. 134. 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, 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, such 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. 135. Section 11167.5 of the Penal Code is amended to read:

11167.5. (a) The reports required by Sections 11166 and 11166.2 shall be confidential and may be disclosed only as provided in subdivision (b). Any violation of the confidentiality provided by this article is a misdemeanor punishable by imprisonment in a county jail not to exceed six months, by a fine of five hundred dollars ($500), or by both that imprisonment and fine.

(b) Reports of suspected child abuse and information contained therein may be disclosed only to the following:

(1) Persons or agencies to whom disclosure of the identity of the reporting party is permitted under Section 11167.

(2) Persons or agencies to whom disclosure of information is permitted under subdivision (b) of Section 11170.

(3) Persons or agencies with whom investigations of child abuse are coordinated under the regulations promulgated under Section 11174.

(4) Multidisciplinary personnel teams as defined in subdivision (d) of Section 18951 of the Welfare and Institutions Code.

(5) Persons or agencies responsible for the licensing of facilities which care for children, as specified in Section 11165.7.

(6) The State Department of Social Services or any county licensing agency which has contracted with the state, as specified in paragraph (3) of subdivision (b) of Section 11170, when an individual has applied for a community care license or child day care license, or for employment in an out-of-home care facility, or when a complaint alleges child abuse by an operator or employee of an out-of-home care facility.

(7) Hospital scan teams. As used in this paragraph, "hospital scan team" means a team of three or more persons established by a hospital, or two or more hospitals in the same county, consisting of health care professionals and representatives of law enforcement and child protective services, the members of which are engaged in the identification of child abuse. The disclosure authorized by this section includes disclosure among all hospital scan teams.

(8) Coroners and medical examiners when conducting a postmortem examination of a child.

(9) The Board of Prison Terms, who may subpoena an employee of a county welfare department who can provide relevant evidence and reports that both (A) are not unfounded, pursuant to Section 11165.12, and (B) concern only the current incidents upon which parole revocation proceedings are pending against a parolee charged with child abuse. The reports and information shall be confidential pursuant to subdivision (d) of Section 11167.

(10) Personnel from a child protective agency responsible for making a placement of a child pursuant to Section 361.3 of, and

Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of, the Welfare and Institutions Code.

(11) Persons who have been identified by the Department of Justice as listed in the Child Abuse Central Index pursuant to subdivision (c) of Section 11170. Nothing in this paragraph shall preclude a submitting agency prior to disclosure from redacting the name, address, and telephone number of a witness, person who reports under this article, or victim in order to maintain confidentiality as required by law.

(12) Out-of-state law enforcement agencies conducting an investigation of child abuse only when an agency makes the request for reports of suspected child abuse in writing and on official letterhead, identifying the suspected abuser or victim by name. The request shall be signed by the department supervisor of the requesting law enforcement agency. The written request shall cite the out-of-state statute or interstate compact provision that requires that the information contained within these reports is to be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and shall cite the criminal penalties for unlawful disclosure provided by the requesting state or the applicable interstate compact provision. In the absence of both (1) a specific out-of-state statute or interstate compact provision that requires that the information contained within these reports be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and (2) criminal penalties equivalent to the penalties in California for unlawful disclosure, access shall be denied.

(13) Persons who have verified with the Department of Justice that they are listed in the Child Abuse Central Index as provided by subdivision (e) of Section 11170. Disclosure under this section shall be subject to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). Nothing in this section prohibits a submitting agency prior to disclosure from redacting the name, address, and telephone number of a witness, person who reports under this article, or victim to maintain confidentiality as required by law.

(14) Each chairperson of a county child death review team, or his or her designee, to whom disclosure of information is permitted under this article, relating to the death of one or more children and any prior child abuse investigation reports maintained involving the same victim, siblings, or suspects. Local child death review teams may share any relevant information regarding case reviews involving child death with other child death review teams.

(c) Authorized persons within county health departments shall be permitted to receive copies of any reports made by health practitioners, as defined in Section 11165.8, pursuant to Section 11165.13, and copies of assessments completed pursuant to Sections 123600 and 123605 of the Health and Safety Code, to the extent

permitted by federal law. Any information received pursuant to this subdivision is protected by subdivision (e).

(d) Nothing in this section requires the Department of Justice to disclose information contained in records maintained under Section 11169 or under the regulations promulgated pursuant to Section 11174, except as otherwise provided in this article.

(e) This section shall not be interpreted to allow disclosure of any reports or records relevant to the reports of child abuse if the disclosure would be prohibited by any other provisions of state or federal law applicable to the reports or records relevant to the reports of child abuse.

SEC. 136. Section 13764 of the Penal Code is amended to read:

13764. By January 1, 2002, the Department of Justice, in consultation with the appropriate law enforcement agency in the participating county, shall prepare and submit to the Governor and the Legislature a report evaluating the success of the pilot project. Criteria to be considered for determining the success of the pilot project shall include, but not be limited to, all of the following:

(a) Measurable increase in the number of illegal firearms retrieved within the hot spot areas.

(b) Measurable decrease in the number of offenses committed using illegal firearms.

(c) Measurable decrease in the overall crime rate within the hot spot areas as compared to crime statistics for the same area prior to the pilot project.

SEC. 137. Section 22050 of the Public Contract Code is amended to read:

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

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

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

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

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

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

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

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

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

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

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

21491, 21501, 21511, 21521, 21531, 21541, 21552, 21567, 21572, 21581, 21591, 21601, 21618, 21624, 21631, 21641, and 22035.

SEC. 138. Section 6353 of the Public Utilities Code is amended to read:

6353. For purpose of calculating the surcharge required in Section 6352, the energy transporter shall do all of the following:

(a) For each transportation customer, determine the volume of transported gas or electricity, in therms or kilowatt hours respectively, subject to the surcharge.

(b) Determine the weighted average cost of the energy transporter's gas or electricity. For gas, the energy transporter shall use its tariffed core subscription weighted average cost of gas (WACOG) exclusive of any California sourced franchise fee factor. For electricity, the energy transporter shall use that portion of the otherwise applicable utility rate or charge which, pursuant to commissioner order, is removed from the bill of a retail electric customer who has elected direct access to reflect the fact that the customer is purchasing energy from a nonutility provider exclusive of any California sourced franchise fee factor. For an energy transporter that does not provide gas or electricity at a commission tariffed rate, the energy transporter shall use the equivalent tariffed rate of the commission regulated energy transporter operating in the same service area.

(c) Determine a product for each transportation customer by multiplying the volume determined pursuant to subdivision (a) by the weighted average cost determined pursuant to subdivision (b).

(d) Determine the surcharge applicable to each transportation customer by multiplying the product determined pursuant to subdivision (c) by the sum of the franchise fee factor plus any franchise fee surcharge authorized for the energy transporter as approved by the commission in the energy transporter's most recent proceeding in which those factors and surcharges were set. An energy transporter not regulated by the commission shall multiply the product determined in subdivision (c) by the franchise fee rate contained in its individual franchise agreement in effect in each municipality.

(e) The surcharge assessed pursuant to this chapter only applies to the end use point.

SEC. 139. Section 130051.18 of the Public Utilities Code is amended to read:

130051.18. Prior to the approval of any contract by the Los Angeles County Metropolitan Transportation Authority, or by any organizational unit of the authority, the authority shall adopt and implement an ordinance for the regulation of lobbying that shall include, at a minimum, the provisions of this section.

(a) For purposes of this section, the following terms are defined as follows:

(1) "Activity expense" means any expense incurred, or payment made, by a lobbyist, lobbying firm, or lobbyist employer, or arranged by a lobbyist, lobbying firm, or lobbyist employer, that benefits in whole or in part any authority official or a member of the immediate family of an authority official.

(2) "Administrative testimony" means influencing or attempting to influence authority action undertaken by any person or entity who does not seek to enter into a contract or other arrangement with the authority by acting as counsel in, appearing as a witness in, or providing written submissions, including answers to inquiries, which become a part of the record of, any proceeding of the authority that is conducted as an open public hearing for which public notice is given.

(3) "Authority" means the Los Angeles County Metropolitan Transportation Authority and all of its organizational units as defined by Section 130051.11.

(4) "Authority action" means the drafting, introduction, consideration, modification, enactment, or defeat of an ordinance, resolution, contract, or report by the governing board of an organizational unit of the authority, or by an authority official, including any action taken, or required to be taken, by a vote of the members of the authority or by the members of the governing board of an organizational unit of the authority, except those actions relating to Article 10 (commencing with Section 30750) of Chapter 5 of Part 3 of Division 10.

(5) "Authority official" means any member of the authority, member of an organizational unit of the authority, or employee of the authority.

(6) "Contribution" means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes.

An expenditure made at the behest of a candidate, committee, or elected officer is a contribution to the candidate, committee, or elected officer unless full and adequate consideration is received for making the expenditure.

"Contribution" also includes the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events; the candidate's own money or property used on behalf of his or her candidacy; the granting of discounts or rebates not extended to the public generally or the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office; the payment of compensation by any person for the personal services or expenses of any other person if those services are rendered or expenses are incurred on behalf of a candidate or committee without payment of full and adequate consideration.

"Contribution" also includes any transfer of anything of value received by a committee from another committee, unless full and adequate consideration is received.

"Contribution" does not include amounts received pursuant to an enforceable promise to the extent that those amounts have been previously reported as a contribution. However, the fact that those amounts have been received shall be indicated in the appropriate campaign statement.

"Contribution" does not include a payment made by an occupant of a home or office for costs related to any meeting or fundraising event held in the occupant's home or office if the costs for the meeting or fundraising event are five hundred dollars ($500) or less.

"Contribution" does not include volunteer personal services or payments made by any individual for his or her own travel expenses if those payments are made voluntarily without any understanding or agreement that they shall be, directly or indirectly, repaid to him or her.

(7) "Employee of the authority" means anyone who receives compensation from the authority for full-time or part-time employment, and any contractor, subcontractor, consultant, expert, or adviser acting on behalf of, or providing advice to, the authority.

(8) "Filing officer" means the individual designated by the authority with whom statements and reports required by this section shall be filed.

(9) "Lobbying" means influencing or attempting to influence authority action through direct or indirect communication, other than administrative testimony, with an authority official.

(10) "Lobbying firm" means any business entity, including an individual lobbyist, that meets either of the following criteria:

(A) The business entity receives or becomes entitled to receive any compensation, other than reimbursement for reasonable travel expenses, for the purpose of influencing authority action on behalf of any other person, if any partner, owner, officer, or employee of the business entity is a lobbyist.

(B) The business entity receives or becomes entitled to receive any compensation, other than reimbursement for reasonable travel expenses, to communicate directly with any agency official for the purpose of influencing authority action on behalf of any other person, if a substantial or regular portion of the activities for which the business entity receives compensation is for the purpose of influencing authority action.

(11) "Lobbyist" means any individual who receives any economic consideration, other than reimbursement for reasonable travel expenses, for lobbying, including consultants and officers or employees of any business entity seeking to enter into a contract with the authority.

(12) "Lobbyist employer" means any person, other than a lobbying firm, who does either of the following:

(A) Employs one or more lobbyists for the purpose of influencing authority action.

(B) Contracts for the services of a lobbying firm for economic consideration for the purpose of influencing authority action.

(b) (1) Lobbyists, lobbying firms, and lobbyist employers shall register with the filing officer within 10 days after qualifying as a lobbyist, lobbying firm, or lobbyist employer. Registration shall be completed prior to the commencement of lobbying by the lobbyist. Registration shall include the filing of a registration statement, and the payment of any fees authorized by this section. Registration shall be renewed annually by the filing of a new registration statement and the payment of a fee.

(2) Each lobbyist, lobbying firm, and lobbyist employer required to register under this section may be charged a fee by the authority in an amount necessary to pay the direct costs of implementing this section.

(3) The lobbyist registration statement shall include all of the following:

(A) The name, address, and telephone number of the lobbyist.

(B) For each person from whom the lobbyist receives compensation to provide lobbying services, all of the following:

(i) The full name, business address, and telephone number of the person.

(ii) A written authorization signed by the person.

(iii) The time period of the contract or employment agreement.

(iv) The lobbying interests of the person.

(C) A statement signed by the lobbyist certifying that he or she has read and understands the prohibitions contained in subdivisions (f) and (g).

(4) The registration statement of a lobbying firm shall include all of the following:

(A) The full name, business address, and telephone number of the lobbying firm.

(B) A list of the lobbyists who are partners, owners, officers, or employees of the lobbying firm.

(C) For each person with whom the lobbying firm contracts to provide lobbying services, all of the following:

(i) The full name, business address, and telephone number of the person.

(ii) A written authorization signed by the person.

(iii) The time period of the contract.

(iv) Information sufficient to identify the lobbying interests of the person.

(D) A statement signed by the designated responsible person that he or she has read and understands the prohibitions contained in subdivisions (f) and (g).

(5) The registration statement of a lobbyist employer shall include all of the following:

(A) The full name, business address, and telephone number of the lobbyist employer.

(B) A list of the lobbyists who are employed by the lobbyist employer.

(C) The lobbying interests of the lobbyist employer, including identification of specific contracts or authority actions.

(D) A statement signed by the designated responsible person that he or she has read and understands the prohibitions contained in subdivisions (f) and (g).

(6) (A) The registration statement may be amended within 10 days of a change in the information included in the statement. However, if the change includes the name of a person by whom a lobbyist is retained, the registration statement shall be amended to show that change prior to the commencement of lobbying by the lobbying firm or the lobbyist.

(B) Lobbying firms and lobbyist employers upon ceasing all lobbying activity that required registration shall file a notice of termination within 30 days after the cessation.

(C) Lobbyists and lobbyist firms are subject to subdivisions (f) and (g) for 12 months after filing a notice of termination.

(c) Lobbyists, lobbying firms, and lobbyist employers that receive payments, make payments, or incur expenses, or expect to receive payments, make payments, or incur expenses, in connection with activities that are reportable pursuant to this section shall keep detailed accounts, records, bills, and receipts for four years, and shall make them reasonably available for inspection for the purposes of auditing for compliance with, or enforcement of, this section.

(d) When a person is required to report activity expenses pursuant to this section, all of the following information shall be provided:

(1) The date and amount of each activity expense.

(2) The full name and official position, if any, of the beneficiary of each expense, a description of the benefit, and the amount of the benefit.

(3) The full name of the payee of each expense if other than the beneficiary.

(e) (1) A lobbying firm shall file a periodic report containing all of the following:

(A) The full name, address, and telephone number of the lobbying firm.

(B) The full name, business address, and telephone number of each person who contracted with the lobbying firm for lobbying services, a description of the specific lobbying interests of the person, and the total payments, including fees and the reimbursement of expenses, received from the person for lobbying services during the reporting period.

(C) A copy of the periodic report completed and verified by each lobbyist in the lobbying firm pursuant to paragraph (2).

(D) Each activity expense incurred by the lobbying firm, including those reimbursed by a person who contracts with the lobbying firm for lobbying services.

(E) The date, amount, and the name of the recipient of any contribution of one hundred dollars ($100) or more made by the filer to an authority official.

(2) A lobbyist shall complete and verify a periodic report, and file his or her report with the filing officer, and a copy of the report with his or her lobbying firm or lobbyist employer. The periodic report shall contain all of the following:

(A) A report of all activity expenses by the lobbyist during the reporting period.

(B) A report of all contributions of one hundred dollars ($100) or more made or delivered by the lobbyist to any authority official during the reporting period.

(3) A lobbyist employer shall file a periodic report containing all of the following:

(A) The name, business address, and telephone number of the lobbyist employer.

(B) The total amount of payments to each lobbying firm.

(C) The total amount of all payments to lobbyists employed by the filer.

(D) A description of the specific lobbying interests of the filer.

(E) A periodic report, completed and verified by each lobbyist employed by a lobbyist employer pursuant to paragraph (1) of subdivision (e).

(F) Each activity expense of the filer and a total of all activity expenses of the filer.

(G) The date, amount, and the name of the recipient of any contribution of one hundred dollars ($100) or more made by the filer to an authority official.

(H) The total of all other payments to influence authority action.

(4) (A) The periodic reports shall be filed within 30 days after the end of each calendar quarter. The period covered shall be from the beginning of the calendar year through the last day of the calendar quarter prior to the 30-day period during which the report is filed, except that the period covered by the first report a person is required to file shall begin with the first day of the calendar quarter in which the filer first registered or qualified.

(B) The original and one copy of each report shall be filed with the filing officer, retained by the authority for a minimum of four years, and available for inspection by the public during regular working hours.

(f) (1) It is unlawful for a lobbyist, a lobbying firm, or a lobbyist employer to make gifts to an authority official aggregating more than ten dollars ($10) in a calendar month, to act as an agent or intermediary in the making of any gift, or to arrange for the making of any gift by any other person.

(2) It is unlawful for any authority official knowingly to receive any gift that is made unlawful by this section. For the purposes of this subdivision, "gift" has the same meaning as defined in Section 130051.17.

(g) No lobbyist or lobbying firm shall do any of the following:

(1) Do anything with the purpose of placing an authority official under personal obligation to the lobbyist, the lobbying firm, or the employer of the lobbyist or lobbying firm.

(2) Deceive or attempt to deceive any authority official with regard to any material fact pertinent to any authority action.

(3) Cause or influence any authority action for the purpose of thereafter being employed to secure its passage or defeat.

(4) Attempt to create a fictitious appearance of public favor or disfavor of any authority action, or cause any communications to be sent to any authority official in the name of any fictitious person or in the name of any real person, except with the consent of that real person.

(5) Represent falsely, either directly or indirectly, that the lobbyist or the lobbying firm can control any authority official.

(6) Accept or agree to accept any payment that is contingent upon the outcome of any authority action.

(h) Any person who knowingly or willfully violates any provision of this section is guilty of a misdemeanor.

(i) The District Attorney of the County of Los Angeles is responsible for the prosecution of violations of this section.

(j) Any person who violates any provision of this section is liable in a civil action brought by the civil prosecutor or by a person residing within the jurisdiction of the authority for an amount up to five hundred dollars ($500), or three times the amount of an unlawful gift or expenditure, whichever amount is greater.

(k) The authority shall reject any bid or other proposal to enter into a contract with the authority by any person or entity that has not complied with the registration and reporting requirements of this section.

(*l*) The provisions of this section are not applicable to any of the following:

(1) An elected public official who is acting in his or her official capacity to influence authority action.

(2) Any newspaper or other periodical of general circulation, book publisher, radio or television station that, in the ordinary course of business, publishes or broadcasts news items, editorials, or other documents, or paid advertisement, that directly or indirectly urges authority action, if the newspaper, periodical, book publisher, radio or television station engages in no further or other activities in connection with urging authority action other than to appear before the authority in support of, or in opposition to, the authority action.

(m) No former authority official shall become a lobbyist for a period of one year after leaving the authority.

SEC. 140. Section 69.5 of the Revenue and Taxation Code is amended to read:

69.5. (a) (1) Notwithstanding any other provision of law, pursuant to subdivision (a) of Section 2 of Article XIII A of the California Constitution, any person over the age of 55 years, or any severely and permanently disabled person, who resides in property that is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII of the California Constitution and Section 218 may transfer, subject to the conditions and limitations provided in this section, the base year value of that property to any replacement dwelling of equal or lesser value that is located within the same county and is purchased or newly constructed by that person as his or her principal residence within two years of the sale by that person of the original property, provided that the base year value of the original property shall not be transferred to the replacement dwelling until the original property is sold.

(2) Notwithstanding the limitation in paragraph (1) requiring that the original property and the replacement dwelling be located in the same county, this limitation shall not apply in any county in which the county board of supervisors, after consultation with local affected agencies within the boundaries of the county, adopts an ordinance making the provisions of paragraph (1) also applicable to situations in which replacement dwellings are located in that county and the original properties are located in another county within this state. The authorization contained in this paragraph shall be applicable in a county only if the ordinance adopted by the board of supervisors complies with all of the following requirements:

(A) It is adopted only after consultation between the board of supervisors and all other local affected agencies within the county's boundaries.

(B) It requires that all claims for transfers of base year value from original property located in another county be granted if the claims meet the applicable requirements of both subdivision (a) of Section 2 of Article XIII A of the California Constitution and this section.

(C) It requires that all base year valuations of original property located in another county and determined by its assessor be accepted in connection with the granting of claims for transfers of base year value.

(D) The ordinance provides that its provisions shall remain operative for a period of not less than five years.

(E) The ordinance specifies the date on and after which its provisions shall be applicable. However, the date specified shall not be earlier than November 9, 1988. The specified applicable date may be a date earlier than the date the county adopts the ordinance.

(b) In addition to meeting the requirements of subdivision (a), any person claiming the property tax relief provided by this section shall be eligible for that relief only if the following conditions are met:

(1) The claimant is an owner and a resident of the original property either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(2) The original property is eligible for the homeowner's exemption, as the result of the claimant's ownership and occupation of the property as his or her principal residence, either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(3) At the time of the sale of the original property, the claimant or the claimant's spouse who resides with the claimant is at least 55 years of age, or is severely and permanently disabled.

(4) At the time of claiming the property tax relief provided by subdivision (a), the claimant is an owner of a replacement dwelling and occupies it as his or her principal place of residence and, as a result thereof, the property is currently eligible for the homeowner's exemption or would be eligible for the exemption except that the property is already receiving the exemption because of an exemption claim filed by the previous owner.

(5) The original property of the claimant is sold by him or her within two years of the purchase or new construction of the replacement dwelling. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and that, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling.

(6) The replacement dwelling, including that portion of land on which it is situated that is specified in paragraph (5), is located entirely within the same county as the claimant's original property.

(7) The claimant has not previously been granted, as a claimant, the property tax relief provided by this section, except that this paragraph shall not apply to any person who becomes severely and permanently disabled subsequent to being granted, as a claimant, the property tax relief provided by this section for any person over the age of 55 years. In order to prevent duplication of claims under this section within this state, county assessors shall report quarterly to the State Board of Equalization that information from claims filed in accordance with subdivision (f) and from county records as is specified by the board necessary to identify fully all claims under this section allowed by assessors and all claimants who have thereby received relief. The board may specify that the information include all or a part of the names and social security numbers of claimants and their spouses and the identity and location of the replacement dwelling to which the claim applies. The information may be required in the form of data processing media or other media and in a format that is compatible with the recordkeeping processes of the counties and the auditing procedures of the state.

(c) The property tax relief provided by this section shall be available if the original property or the replacement dwelling, or both, of the claimant, includes, but is not limited to, either of the following:

(1) A unit or lot within a cooperative housing corporation, a community apartment project, a condominium project, or a planned unit development. If the unit or lot constitutes the original property of the claimant, the assessor shall transfer to the claimant's replacement dwelling only the base year value of the claimant's unit or lot and his or her share in any common area reserved as an appurtenance of that unit or lot. If the unit or lot constitutes the replacement dwelling of the claimant, the assessor shall transfer the base year value of the claimant's original property only to the unit or lot of the claimant and any share of the claimant in any common area reserved as an appurtenance of that unit or lot.

(2) A mobilehome or a mobilehome and any land owned by the claimant on which the mobilehome is situated. If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's original property, the assessor shall transfer to the claimant's replacement dwelling either the base year value of the mobilehome or the base year value of the mobilehome and the land on which it is situated, as appropriate. No transfer of base year value shall be made by the assessor of that portion of land that does not constitute a part of the original property, as provided in paragraph (4) of subdivision (g). If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's replacement dwelling, the assessor shall transfer the base year value of the claimant's original property either to the mobilehome or the mobilehome and the land on which it is situated, as appropriate. No transfer of base year value shall be made by the assessor to that portion of land that does not constitute a part of the replacement dwelling, as provided in paragraph (3) of subdivision (g).

This subdivision shall be subject to the limitations specified in subdivision (d).

(d) The property tax relief provided by this section shall be available to a claimant who is the coowner of original property, as a joint tenant, a tenant in common, or a community property owner, subject to the following limitations:

(1) If a single replacement dwelling is purchased or newly constructed by all of the coowners and each coowner retains an interest in the replacement dwelling, the claimant shall be eligible under this section whether or not any or all of the remaining coowners would otherwise be eligible claimants.

(2) If two or more replacement dwellings are separately purchased or newly constructed by two or more coowners and more than one coowner would otherwise be an eligible claimant, only one coowner shall be eligible under this section. These coowners shall

determine by mutual agreement which one of them shall be deemed eligible.

(3) If two or more replacement dwellings are separately purchased or newly constructed by two coowners who held the original property as community property, only the coowner who has attained the age of 55 years, or is severely and permanently disabled, shall be eligible under this section. If both spouses are over 55 years of age, they shall determine by mutual agreement which one of them is eligible.

In the case of coowners whose original property is a multiunit dwelling, the limitations imposed by paragraphs (2) and (3) shall only apply to coowners who occupied the same dwelling unit within the original property at the time specified in paragraph (2) of subdivision (b).

(e) Upon the sale of original property, the assessor shall determine a new base year value for that property in accordance with subdivision (a) of Section 2 of Article XIII A of the California Constitution and Section 110.1, whether or not a replacement dwelling is subsequently purchased or newly constructed by the former owner or owners of the original property.

This section shall not apply unless the transfer of the original property is a change in ownership that either (1) subjects that property to reappraisal at its current fair market value in accordance with Section 110.1 or 5803 or (2) results in a base year value determined in accordance with this section, Section 69, or Section 69.3 because the property qualifies under this section, Section 69, or Section 69.3 as a replacement dwelling or property.

(f) A claimant shall not be eligible for the property tax relief provided by this section unless the claimant provides to the assessor, on a form that the assessor shall make available upon request, the following information:

(1) The name and social security number of each claimant and of any spouse of the claimant who was a record owner of the original property at the time of its sale or is a record owner of the replacement dwelling.

(2) Proof that the claimant or the claimant's spouse who resided on the original property with the claimant was, at the time of its sale, at least 55 years of age, or severely and permanently disabled. Proof of severe and permanent disability shall be considered a certification, signed by a licensed physician and surgeon of appropriate specialty, attesting to the claimant's severely and permanently disabled condition. In the absence of available proof that a person is over 55 years of age, the claimant shall certify under penalty of perjury that the age requirement is met. In the case of a severely and permanently disabled claimant either of the following shall be submitted:

(A) A certification, signed by a licensed physician or surgeon of appropriate specialty that identifies specific reasons why the

disability necessitates a move to the replacement dwelling and the disability-related requirements, including any locational requirements, of a replacement dwelling. The claimant shall substantiate that the replacement dwelling meets disability-related requirements so identified and that the primary reason for the move to the replacement dwelling is to satisfy those requirements. If the claimant, or the claimant's spouse or guardian, so declares under penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move to the replacement dwelling is to satisfy identified disability-related requirements.

(B) The claimant's substantiation that the primary purpose of the move to the replacement dwelling is to alleviate financial burdens caused by the disability. If the claimant, or the claimant's spouse or guardian, so declares under penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move is to alleviate the financial burdens caused by the disability.

(3) The address and, if known, the assessor's parcel number of the original property.

(4) The date of the claimant's sale of the original property and the date of the claimant's purchase or new construction of a replacement dwelling.

(5) A statement by the claimant that he or she occupied the replacement dwelling as his or her principal place of residence on the date of the filing of his or her claim.

The State Board of Equalization shall design the form for claiming eligibility.

Any claim under this section shall be filed within three years of the date the replacement dwelling was purchased or the new construction of the replacement dwelling was completed.

(g) For purposes of this section:

(1) "Person over the age of 55 years" means any person or the spouse of any person who has attained the age of 55 years or older at the time of the sale of original property.

(2) "Base year value of the original property" means its base year value, as determined in accordance with Section 110.1, with the adjustments permitted by subdivision (b) of Section 2 of Article XIII A of the California Constitution and subdivision (f) of Section 110.1, determined as of the date immediately prior to the date that the original property is sold by the claimant.

If the replacement dwelling is purchased or newly constructed after the transfer of the original property, "base year value of the original property" also includes any inflation factor adjustments permitted by subdivision (f) of Section 110.1 for the period subsequent to the sale of the original property. The base year or years used to compute the "base year value of the original property" shall be deemed to be the base year or years of any property to which that base year value is transferred pursuant to this section.

(3) "Replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, that is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of a replacement dwelling includes only that area of reasonable size that is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate replacement dwelling. For purposes of this paragraph, "area of reasonable size that is used as a site for a residence" includes all land if any nonresidential uses of the property are only incidental to the use of the property as a residential site.

(4) "Original property" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, that is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of original property includes only that area of reasonable size that is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate original property. For purposes of this paragraph, "area of reasonable size that is used as a site for a residence" includes all land if any nonresidential uses of the property are only incidental to the use of the property as a residential site.

(5) "Equal or lesser value" means that the amount of the full cash value of a replacement dwelling does not exceed one of the following:

(A) One hundred percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed prior to the date of the sale of the original property.

(B) One hundred and five percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the first year following the date of the sale of the original property.

(C) One hundred and ten percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the second year following the date of the sale of the original property.

For the purposes of this paragraph, except as otherwise provided in paragraph (4) of subdivision (h), if the replacement dwelling is, in part, purchased and, in part, newly constructed, the date the "replacement dwelling is purchased or newly constructed" is the

date of purchase or the date of completion of construction, whichever is later.

(6) "Full cash value of the replacement dwelling" means its full cash value, determined in accordance with Section 110.1, as of the date on which it was purchased or new construction was completed, and after the purchase or the completion of new construction.

(7) "Full cash value of the original property" means its new base year value, determined in accordance with subdivision (e), without the application of subdivision (h) of Section 2 of Article XIII A of the California Constitution, plus the adjustments permitted by subdivision (b) of Section 2 of Article XIII A and subdivision (f) of Section 110.1 for the period from the date of its sale by the claimant to the date on which the replacement property was purchased or new construction was completed.

(8) "Sale" means any change in ownership of the original property for consideration.

(9) "Claimant" means any person claiming the property tax relief provided by this section. If a spouse of that person is a record owner of the replacement dwelling, the spouse is also a claimant for purposes of determining whether in any future claim filed by the spouse under this section the condition of eligibility specified in paragraph (7) of subdivision (b) has been met.

(10) "Property that is eligible for the homeowner's exemption" includes property that is the principal place of residence of its owner and is entitled to exemption pursuant to Section 205.5.

(11) "Person" means any individual, but does not include any firm, partnership, association, corporation, company, or other legal entity or organization of any kind.

(12) "Severely and permanently disabled" means any person described in subdivision (b) of Section 74.3.

(h) (1) Upon the timely filing of a claim, the assessor shall adjust the new base year value of the replacement dwelling in conformity with this section. This adjustment shall be made as of the latest of the following dates:

(A) The date the original property is sold.

(B) The date the replacement dwelling is purchased.

(C) The date the new construction of the replacement dwelling is completed.

(2) Any taxes that were levied on the replacement dwelling prior to the filing of the claim on the basis of the replacement dwelling's new base year value, and any allowable annual adjustments thereto, shall be canceled or refunded to the claimant to the extent that the taxes exceed the amount that would be due when determined on the basis of the adjusted new base year value.

(3) Notwithstanding Section 75.10, Chapter 3.5 (commencing with Section 75) shall be utilized for purposes of implementing this subdivision, including adjustments of the new base year value of

replacement dwellings acquired prior to the sale of the original property.

(4) In the case where a claim under this section has been timely filed and granted, and new construction is performed upon the replacement dwelling subsequent to the transfer of base year value, the property tax relief provided by this section also shall apply to the replacement dwelling, as improved, and thus there shall be no reassessment upon completion of the new construction if both of the following conditions are met:

(A) The new construction is completed within two years of the date of the sale of the original property and the owner notifies the assessor in writing of completion of the new construction within 30 days after completion.

(B) The fair market value of the new construction on the date of completion, plus the full cash value of the replacement dwelling on the date of acquisition, is not more than the full cash value of the original property as determined pursuant to paragraph (7) of subdivision (g) for purposes of granting the original claim.

(i) Any claimant may rescind a claim for the property tax relief provided by this section and shall not be considered to have received that relief for purposes of paragraph (7) of subdivision (b), if a written notice of rescission is delivered to the office of the assessor in which the original claim was filed and all of the following have occurred:

(1) The notice is signed by the original filing claimant or claimants.

(2) The notice is delivered to the office of the assessor before the date that the county first issues, as a result of relief granted under this section, a refund check for property taxes imposed upon the replacement dwelling. If granting relief will not result in a refund of property taxes, then the notice shall be delivered before payment is first made of any property taxes, or any portion thereof, imposed upon the replacement dwelling consistent with relief granted under this section. If payment of the taxes is not made, then notice shall be delivered before the first date that those property taxes, or any portion thereof, imposed upon the replacement dwelling, consistent with relief granted under this section, are delinquent.

(3) The notice is accompanied by the payment of a fee as the assessor may require, provided that the fee shall not exceed an amount reasonably related to the estimated cost of processing a rescission claim, including both direct costs and developmental and indirect costs, such as costs for overhead, personnel, supplies, materials, office space, and computers.

(j) (1) With respect to the transfer of base year value of original properties to replacement dwellings located in the same county, this section, except as provided in paragraph (3) or (4), shall apply to any replacement dwelling that is purchased or newly constructed on or after November 6, 1986.

(2) With respect to the transfer of base year value of original properties to replacement dwellings located in different counties, except as provided in paragraph (4), this section shall apply to any replacement dwelling that is purchased or newly constructed on or after the date specified in accordance with subparagraph (E) of paragraph (2) of subdivision (a) in the ordinance of the county in which the replacement dwelling is located, but shall not apply to any replacement dwelling which was purchased or newly constructed before November 9, 1988.

(3) With respect to the transfer of base year value by a severely and permanently disabled person, this section shall apply only to replacement dwellings that are purchased or newly constructed on or after June 6, 1990.

(4) The amendments made to subdivision (e) by the act adding this paragraph shall apply only to replacement dwellings under Section 69 that are acquired or newly constructed on or after October 20, 1991, and shall apply commencing with the 1991–92 fiscal year.

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

SEC. 141. Section 95.31 of the Revenue and Taxation Code is amended to read:

95.31. (a) (1) Notwithstanding any other provision of law, any eligible county may, upon the recommendation of the county assessor, and by resolution of the board of supervisors of that county adopted not later than December 1 of the fiscal year for which it is to first apply, elect to participate in the State-County Property Tax Administration Program.

(2) Except as specified in paragraph (3), for the purposes of this section, an eligible county shall mean a county in which additional property tax revenue allocated to school entities would reduce the amount of General Fund moneys apportioned to school entities. However, eligibility shall be terminated when, in combination with resources in the Educational Revenue Augmentation Fund, additional property tax revenues allocated to school entities will not result in a reduction in the General Fund apportionments.

(3) Notwithstanding paragraph (2), both the County of Solano and the County of San Benito shall be deemed eligible counties that may, upon the recommendation of the county assessor, and by resolution of the board of supervisors of the county adopted on or before March 31, 1996, elect to participate in the State-County Property Tax Administration Program.

(b) (1) In each fiscal year from the 1995–96 fiscal year to the 2000–01 fiscal year, inclusive, an eligible county participating in the State-County Property Tax Administration Program may receive a loan for up to the amount listed in paragraph (3). The loan shall be repaid by June 30 of the fiscal year following the year in which the loan is made. However, at the discretion of the Director of Finance, the loan may be renewed once for an additional 12-month period at the request of the participating county board of supervisors. For the

Counties of Fresno, Orange, San Benito, and Solano any loan agreement signed on or before July 31, 1996, shall be deemed a loan agreement for the 1995–96 fiscal year for the purposes of this section.

(2) If an eligible county elects to participate in the State-County Property Tax Administration Program, it shall enter into a contractual agreement with the Department of Finance. At a minimum, the contractual agreement shall include the following:

(A) The loan amount, as determined by the Director of Finance.

(B) Repayment provisions, including the interception of Motor Vehicle License Fee Account moneys apportioned pursuant to Section 11005 to repay the General Fund.

(C) A listing of the proposed use of the additional resources including, but not limited to:

(i) Proposed new positions.

(ii) Increased automation costs.

(D) An agreement to provide to the Department of Finance, by March 31 of the fiscal year in which the loan is made, a report projecting the impact of the increased funding in the current and subsequent fiscal year.

(3) Upon request of the Department of Finance, the Controller shall provide a loan to the following counties for up to the amount specified by the Director of Finance, not to exceed the following amounts:

Jurisdiction	Amount
Alameda	$ 2,152,429
Alpine	3,124
Amador	80,865
Butte	381,956
Calaveras	109,897
Colusa	53,957
Contra Costa	2,022,088
Del Norte	36,203
El Dorado	302,795
Fresno	1,165,249
Glenn	59,197
Humboldt	210,806
Imperial	231,673
Inyo	100,080
Kern	1,211,318
Kings	138,653
Lake	117,376
Lassen	54,699
Los Angeles	13,451,670

Madera	212,991
Marin	790,490
Mariposa	46,476
Mendocino	160,435
Merced	298,004
Modoc	24,022
Mono	47,778
Monterey	795,819
Napa	366,020
Nevada	234,292
Orange	6,826,325
Placer	628,047
Plumas	80,606
Riverside	2,358,068
Sacramento	1,554,245
San Benito	90,408
San Bernardino	2,139,938
San Diego	5,413,943
San Francisco	1,013,332
San Joaquin	818,686
San Luis Obispo	736,288
San Mateo	2,220,001
Santa Barbara	926,817
Santa Clara	4,213,639
Santa Cruz	565,328
Shasta	342,399
Sierra	7,383
Siskiyou	91,164
Solano	469,207
Sonoma	1,035,049
Stanislaus	866,155
Sutter	147,436
Tehama	97,222
Trinity	24,913
Tulare	501,907
Tuolumne	126,067
Ventura	1,477,789
Yolo	278,309
Yuba	88,968

(4) The Department of Finance shall consider any or all of the following items in determining the extent to which a county has satisfied the terms and repaid the loan, pursuant to the contract, as offered under this part:

(A) County performance as indicated by the State Board of Equalization's sample survey required pursuant to Section 15640 of the Government Code.

(B) Performance measures adopted by the California Assessors' Association.

(C) Reduction of backlog of assessment appeals and Proposition 8 declines in value.

(D) County compliance with mandatory audits required by Section 469.

(E) Reduction of backlogs in new construction, changes in ownership, and supplemental roll.

(F) Other measures, as determined by the Director of Finance.

(5) The Director of Finance shall notify the Controller of any participating county that fails to comply with the terms of the agreement, including the repayment of the loan. When the Controller receives notice from the Director of Finance, the Controller shall make an apportionment to the General Fund on behalf of the participating county in the amount of that required payment for the purpose of making that payment. The Controller shall make that payment only from moneys credited to the Motor Vehicle License Fee Account in the Transportation Tax Fund to which the participating county is entitled at that time under Chapter 5 (commencing with Section 11001) of Part 5 of Division 2, and shall thereupon reduce, by the amount of the payment, the subsequent allocation or allocations to which the county would otherwise be entitled under that chapter.

(c) (1) Funds appropriated for purposes of this section shall be used to enhance the property tax administration system by providing supplemental resources. Amounts provided to any county as a loan pursuant to this section shall not be used to supplant the current level of funding. In order to participate in the State-County Property Tax Administration Program, a participating county shall maintain a base staffing level, including contract staff, and a total funding level in the county assessor's office, independent of the loan proceeds provided pursuant to this act, equal to the levels in the 1994–95 fiscal year exclusive of amounts provided to the assessor's office pursuant to Item 9100-102-001 of the Budget Act of 1994. However, in a county in which the 1994–95 funding level for the assessor's office was higher than the 1993–94 level, the 1993–94 fiscal year staffing and funding levels shall be considered the base year for purposes of this section. Commencing with the 1996–97 fiscal year, if a county was otherwise eligible but was unable to participate in this program in the 1995–96 fiscal year because it did not meet the funding level and staffing requirements of this paragraph, that county shall maintain a base

staffing level, including contract staff, and a total funding level in the county assessor's office equal to the levels in the 1995–96 fiscal year.

(2) Prior to the assessor's recommendation for participation in the State-County Property Tax Administration Program, the assessor shall consult with the county tax collector, and any other county agency directly involved in property tax administration, to discuss the needs of the program for the duration of the contractual agreement.

(d) A participating county may establish a tracking system whereby a work or function number is assigned to each appraisal or administrative activity. That system should provide statistical data on the number of production units performed by each employee and the positive and negative change in assessed value attributable to the activities performed by each employee.

(e) Notwithstanding Section 95.3, no amount of funds provided to an eligible county pursuant to this section shall result in any deduction from those property tax administrative costs that are eligible for reimbursement pursuant to Section 95.3.

(f) At the request of the Department of Finance, the board shall assist the Department of Finance in evaluating contracts entered into pursuant to this section.

SEC. 142. Section 97.3 of the Revenue and Taxation Code is amended to read:

97.3. Notwithstanding any other provision of this chapter, the computations and allocations made by each county pursuant to Section 96.1 or its predecessor section, as modified by Section 97.2 or its predecessor section for the 1992–93 fiscal year, shall be modified for the 1993–94 fiscal year pursuant to subdivisions (a) to (c), inclusive, as follows:

(a) The amount of property tax revenue deemed allocated in the prior fiscal year to each county and city and county shall be reduced by an amount to be determined by the Director of Finance in accordance with the following:

(1) The total amount of the property tax reductions for counties and cities and counties determined pursuant to this section shall be one billion nine hundred ninety-eight million dollars ($1,998,000,000) in the 1993–94 fiscal year.

(2) The Director of Finance shall determine the amount of the reduction for each county or city and county as follows:

(A) The proportionate share of the property tax revenue reduction for each county or city and county that would have been imposed on all counties under the proposal specified in the "May Revision of the 1993–94 Governor's Budget" shall be determined by reference to the document entitled "Estimated County Property Tax Transfers Under Governor's May Revision Proposal," published by the Legislative Analyst's Office on June 1, 1993.

(B) Each county's or city and county's proportionate share of total taxable sales in all counties in the 1991–92 fiscal year shall be determined.

(C) An amount for each county and city and county shall be determined by applying its proportionate share determined pursuant to subparagraph (A) to the one billion nine hundred ninety-eight million dollar ($1,998,000,000) statewide reduction for counties and cities and counties.

(D) An amount for each county and city and county shall be determined by applying its proportionate share determined pursuant to subparagraph (B) to the one billion nine hundred ninety-eight million dollar ($1,998,000,000) statewide reduction for counties and cities and counties.

(E) The Director of Finance shall add the amounts determined pursuant to subparagraphs (C) and (D) for each county and city and county, and divide the resulting figure by two. The amount so determined for each county and city and county shall be divided by a factor of 1.038. The resulting figure shall be the amount of property tax revenue to be subtracted from the amount of property tax revenue deemed allocated in the prior fiscal year.

(3) The Director of Finance shall, by July 15, 1993, report to the Joint Legislative Budget Committee its determination of the amounts determined pursuant to paragraph (2).

(4) On or before August 15, 1993, the Director of Finance shall notify the auditor of each county and city and county of the amount of property tax revenue reduction determined for each county and city and county.

(5) Notwithstanding any other provision of this subdivision, the amount of the reduction specified in paragraph (2) for any county or city and county that has first implemented, for the 1993–94 fiscal year, the alternative procedure for the distribution of property tax levies authorized by Chapter 2 (commencing with Section 4701) of Part 8 shall be reduced, for the 1993–94 fiscal year only, in the amount of any increased revenue allocated to each qualifying school entity that would not have been allocated for the 1993–94 fiscal year but for the implementation of that alternative procedure. For purposes of this paragraph, "qualifying school entity" means any school district, county office of education, or community college district that is not an excess tax school entity as defined in Section 95.1. Notwithstanding any other provision of this paragraph, the amount of any reduction calculated pursuant to this paragraph for any county or city and county shall not exceed the reduction calculated for that county or city and county pursuant to paragraph (2).

(b) The amount of property tax revenue deemed allocated in the prior fiscal year to each city shall be reduced by an amount to be determined by the Director of Finance in accordance with the following:

(1) The total amount of the property tax reductions determined for cities pursuant to this section shall be two hundred eighty-eight million dollars ($288,000,000) in the 1993–94 fiscal year.

(2) The Director of Finance shall determine the amount of reduction for each city as follows:

(A) The amount of property tax revenue that is estimated to be attributable in the 1993–94 fiscal year to the amount of each city's state assistance payment received by that city pursuant to Chapter 282 of the Statutes of 1979 shall be determined.

(B) A factor for each city equal to the amount determined pursuant to subparagraph (A) for that city, divided by the total of the amounts determined pursuant to subparagraph (A) for all cities, shall be determined.

(C) An amount for each city equal to the factor determined pursuant to subparagraph (B), multiplied by three hundred eighty-two million five hundred thousand dollars ($382,500,000), shall be determined.

(D) In no event shall the amount for any city determined pursuant to subparagraph (C) exceed a per capita amount of nineteen dollars and thirty-one cents ($19.31), as determined in accordance with that city's population on January 1, 1993, as estimated by the Department of Finance.

(E) The amount determined for each city pursuant to subparagraphs (C) and (D) shall be the amount of property tax revenue to be subtracted from the amount of property tax revenue deemed allocated in the prior year.

(3) The Director of Finance shall, by July 15, 1993, report to the Joint Legislative Budget Committee those amounts determined pursuant to paragraph (2).

(4) On or before August 15, 1993, the Director of Finance shall notify each county auditor of the amount of property tax revenue reduction determined for each city located within that county.

(c) (1) The amount of property tax revenue deemed allocated in the prior fiscal year to each special district, as defined pursuant to subdivision (m) of Section 95, shall be reduced by the amount determined for the district pursuant to paragraph (3) and increased by the amount determined for the district pursuant to paragraph (4). The total net amount of these changes is intended to equal two hundred forty-four million dollars ($244,000,000) in the 1993–94 fiscal year.

(2) (A) Notwithstanding any other provision of this subdivision, no reduction shall be made pursuant to this subdivision with respect to any of the following special districts:

(i) A local hospital district as described in Division 23 (commencing with Section 32000) of the Health and Safety Code.

(ii) A water agency that does not sell water at retail, but not including an agency the primary function of which, as determined on the basis of total revenues, is flood control.

(iii) A transit district.

(iv) A police protection district formed pursuant to Part 1 (commencing with Section 20000) of Division 14 of the Health and Safety Code.

(v) A special district that was a multicounty special district as of July 1, 1979.

(B) Notwithstanding any other provision of this subdivision, the first one hundred four thousand dollars ($104,000) of the amount of any reduction that otherwise would be made under this subdivision with respect to a qualifying community services district shall be excluded. For purposes of this subparagraph, a "qualifying community services district" means a community services district that meets all of the following requirements:

(i) Was formed pursuant to Division 3 (commencing with Section 61000) of Title 6 of the Government Code.

(ii) Succeeded to the duties and properties of a police protection district upon the dissolution of that district.

(iii) Currently provides police protection services to substantially the same territory as did that district.

(iv) Is located within a county in which the board of supervisors has requested the Department of Finance that this subparagraph be operative in the county.

(3) (A) On or before September 15, 1993, the county auditor shall determine an amount for each special district equal to the amount of its allocation determined pursuant to Section 96 or 96.1, and Section 96.5 or their predecessor sections for the 1993–94 fiscal year multiplied by the ratio determined pursuant to paragraph (1) of subdivision (a) of former Section 98.6 as that section read on June 15, 1993. In those counties that were subject to former Sections 98.66, 98.67, and 98.68, as those sections read on that same date, the county auditor shall determine an amount for each special district that represents the current amount of its allocation determined pursuant to Section 96 or 96.1, and Section 96.5 or their predecessor sections for the 1993–94 fiscal year that is attributed to the property tax shift from schools required by Chapter 282 of the Statutes of 1979. In that county subject to Section 100.4, the county auditor shall determine an amount for each special district that represents the current amount of its allocations determined pursuant to Section 96, 96.1, 96.5, or 100.4 or their predecessor sections for the 1993–94 fiscal year that is attributable to the property tax shift from schools required by Chapter 282 of the Statutes of 1979. In determining these amounts, the county auditor shall adjust for the influence of increased assessed valuation within each district, including the effect of jurisdictional changes, and the reductions in property tax allocations required in the 1992–93 fiscal year by Chapters 699 and 1369 of the Statutes of 1992. In the case of a special district that has been consolidated or reorganized, the auditor shall determine the amount of its current property tax allocation that is attributable to the prior district's or

districts' receipt of state assistance payments pursuant to Chapter 282 of the Statutes of 1979. Notwithstanding any other provision of this paragraph, for a special district that is governed by a city council or whose governing board has the same membership as a city council and that is a subsidiary district as defined in subdivision (e) of Section 16271 of the Government Code, the county auditor shall multiply the amount that otherwise would be calculated pursuant to this paragraph by 0.38 and the result shall be used in the calculations required by paragraph (5). In no event shall the amount determined by this paragraph be less than zero.

(B) Notwithstanding subparagraph (A), commencing with the 1994–95 fiscal year, in the County of Sacramento, the auditor shall determine the amount for each special district that represents the current amount of its allocations determined pursuant to Section 96, 96.1, 96.5, or 100.6 for the 1994–95 fiscal year that is attributed to the property tax shift from schools required by Chapter 282 of the Statutes of 1979.

(4) (A) (i) On or before September 15, 1993, the county auditor shall determine an amount for each special district that is engaged in fire protection activities, as reported to the Controller for inclusion in the 1989–90 Edition of the Financial Transactions Report Concerning Special Districts under the heading of "Fire Protection," that is equal to the amount of revenue allocated to that special district from the Special District Augmentation Fund for fire protection activities in the 1992–93 fiscal year. For purposes of the preceding sentence for counties of the second class, the phrase "amount of revenue allocated to that special district" means an amount of revenue that was identified for transfer to that special district, rather than the amount of revenue that was actually received by that special district pursuant to that transfer.

(ii) In the case of a special district, other than a special district governed by the county board of supervisors or whose governing body is the same as the county board of supervisors, that is engaged in fire protection activities as reported to the Controller, the county auditor shall also determine the amount by which the district's amount determined pursuant to paragraph (3) exceeds the amount by which its allocation was reduced by operation of former Section 98.6 in the 1992–93 fiscal year. This amount shall be added to the amount otherwise determined for the district under this paragraph. In any county subject to former Section 98.65, 98.66, 98.67, or 98.68 in that same fiscal year, the county auditor shall determine for each special district that is engaged in fire protection activities an amount that is equal to the amount determined for that district pursuant to paragraph (3).

(B) For purposes of this paragraph, a special district includes any special district that is allocated property tax revenue pursuant to this chapter and does not appear in the State Controller's Report on Financial Transactions Concerning Special Districts, but is engaged

in fire protection activities and appears in the State Controller's Report on Financial Transactions Concerning Counties.

(5) The total amount of property taxes allocated to special districts by the county auditor as a result of paragraph (4) shall be subtracted from the amount of property tax revenues not allocated to special districts by the county auditor as a result of paragraph (3) to determine the amount to be deposited in the Education Revenue Augmentation Fund as specified in subdivision (d).

(6) On or before September 30, 1993, the county auditor shall notify the Director of Finance of the net amount determined for special districts pursuant to paragraph (5).

(d) (1) The amount of property tax revenues not allocated to the county, city and county, cities within the county, and special districts as a result of the reductions required by subdivisions (a), (b), and (c) shall instead be deposited in the Educational Revenue Augmentation Fund established in each county or city and county pursuant to Section 97.2. The amount of revenue in the Educational Revenue Augmentation Fund, derived from whatever source, shall be allocated pursuant to paragraphs (2) and (3) to school districts and county offices of education, in total, and to community college districts, in total, in the same proportion that property tax revenues were distributed to school districts and county offices of education, in total, and community college districts, in total, during the 1992–93 fiscal year.

(2) The county auditor shall, based on information provided by the county superintendent of schools pursuant to this paragraph, allocate that proportion of the revenue in the Educational Revenue Augmentation Fund to be allocated to school districts and county offices of education only to those school districts and county offices of education within the county that are not excess tax school entities, as defined in subdivision (n) of Section 95. The county superintendent of schools shall determine the amount to be allocated to each school district in inverse proportion to the amounts of property tax revenue per average daily attendance in each school district. For each county office of education, the allocation shall be made based on the historical split of base property tax revenue between the county office of education and school districts within the county. In no event shall any additional money be allocated from the Educational Revenue Augmentation Fund to a school district or county office of education upon that district or county office of education becoming an excess tax school entity. If, after determining the amount to be allocated to each school district and county office of education, the county superintendent of schools determines there are still additional funds to be allocated, the county superintendent of schools shall determine the remainder to be allocated in inverse proportion to the amounts of property tax revenue, excluding Educational Revenue Augmentation Fund moneys, per average daily attendance in each remaining school district, and on the basis

of the historical split described above for each county office of education, that is not an excess tax school entity until all funds that would not result in a school district or county office of education becoming an excess tax school entity are allocated. The county superintendent of schools may determine the amounts to be allocated between each school district and county office of education to ensure that all funds that would not result in a school district or county office of education becoming an excess tax school entity are allocated.

(3) The county auditor shall, based on information provided by the Chancellor of the California Community Colleges pursuant to this paragraph, allocate that proportion of the revenue in the Educational Revenue Augmentation Fund to be allocated to community college districts only to those community college districts within the county that are not excess tax school entities, as defined in subdivision (n) of Section 95. The chancellor shall determine the amount to be allocated to each community college district in inverse proportion to the amounts of property tax revenue per funded full-time equivalent student in each community college district. In no event shall any additional money be allocated from the Educational Revenue Augmentation Fund to a community college district upon that district becoming an excess tax school entity.

(4) (A) If, after making the allocation required pursuant to paragraph (2), the auditor determines that there are still additional funds to be allocated, the auditor shall allocate those excess funds pursuant to paragraph (3). If, after making the allocation pursuant to paragraph (3), the auditor determines that there are still additional funds to be allocated, the auditor shall allocate those excess funds pursuant to paragraph (2). If, after determining the amount to be allocated to each community college district, the Chancellor of the California Community Colleges determines that there are still additional funds to be allocated, the Chancellor of the California Community Colleges shall determine the remainder to be allocated to each community college district in inverse proportion to the amounts of property tax revenue, excluding Educational Revenue Augmentation Fund moneys, per funded full-time equivalent student in each remaining community college district that is not an excess tax school entity until all funds that would not result in a community college district becoming an excess tax school entity are allocated.

(B) (i) For the 1995–96 fiscal year and each fiscal year thereafter, if, after making the allocations pursuant to paragraphs (2) and (3) and subparagraph (A), the auditor determines that there are still additional funds to be allocated, the auditor shall, subject to clauses (ii) and (iii), allocate those excess funds to the county superintendent of schools. Funds allocated pursuant to this subparagraph shall be counted as property tax revenues for special education programs in augmentation of the amount calculated

pursuant to Section 2572 of the Education Code, to the extent that those property tax revenues offset state aid for county offices of education and school districts within the county pursuant to Section 56712 of the Education Code.

(ii) For the 1995–96 fiscal year only, this subparagraph shall have no application to the County of Mono and the amount allocated pursuant to this subparagraph in the County of Marin shall not exceed five million dollars ($5,000,000).

(iii) For the 1996–97 fiscal year only, the total amount of funds allocated by the auditor pursuant to this subparagraph and subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.2 shall not exceed that portion of two million five hundred thousand dollars ($2,500,000) that corresponds to the county's proportionate share of all moneys allocated pursuant to this subparagraph and subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.2 for the 1995–96 fiscal year. Upon the request of the auditor, the Department of Finance shall provide to the auditor all information in the department's possession that is necessary for the auditor to comply with this clause.

(C) For purposes of allocating the Educational Revenue Augmentation Fund for the 1996–97 fiscal year, the auditor shall, after making the allocations for special education programs, if any, required by subparagraph (B), allocate all remaining funds among the county, cities, and special districts in proportion to the amounts of ad valorem property tax revenue otherwise required to be shifted from those local agencies to the county's Educational Revenue Augmentation Fund for the relevant fiscal year. For purposes of ad valorem property tax revenue allocations for the 1997–98 fiscal year and each fiscal year thereafter, no amount of ad valorem property tax revenue allocated to the county, a city, or a special district pursuant to this subparagraph shall be deemed to be an amount of ad valorem property tax revenue allocated to that local agency in the prior fiscal year.

(5) For purposes of allocations made pursuant to Section 96.1 for the 1994–95 fiscal year, the amounts allocated from the Educational Revenue Augmentation Fund pursuant to this subdivision, other than those amounts deposited in the Educational Revenue Augmentation Fund pursuant to any provision of the Health and Safety Code, shall be deemed property tax revenue allocated to the Educational Revenue Augmentation Fund in the prior fiscal year.

SEC. 143. Section 619 of the Revenue and Taxation Code, as amended by Section 10 of Chapter 940 of the Statutes of 1997, is amended to read:

619. (a) Except as provided in subdivision (f), the assessor shall, upon or prior to completion of the local roll, either:

(1) Inform each assessee of real property on the local secured roll whose property's full value has increased of the assessed value of that property as it shall appear on the completed local roll; or

(2) Inform each assessee of real property on the local secured roll, or each assessee on the local secured roll and each assessee on the unsecured roll, of the assessed value of his or her real property or of both his or her real property and his or her personal property as it shall appear on the completed local roll.

(b) The information given by the assessor to the assessee pursuant to paragraph (1) or (2) of subdivision (a) shall include a notification of hearings by the county board of equalization, which shall include the period during which assessment protests will be accepted and the place where they may be filed. The information shall also include an explanation of the stipulation procedure set forth in Section 1607 and the manner in which the assessee may request use of this procedure.

(c) The information shall also include the full value of the property.

(d) The information shall be furnished by the assessor to the assessee by regular United States mail directed to him or her at his or her latest address known to the assessor.

(e) Neither the failure of the assessee to receive the information nor the failure of the assessor to so inform the assessee shall in any way affect the validity of any assessment or the validity of any taxes levied pursuant thereto.

(f) This section shall not apply to annual increases in the valuation of property which reflect the inflation rate, not to exceed 2 percent, pursuant to the authority of subdivision (b) of Section 2 of Article XIII A of the California Constitution, for purposes of property tax limitation determinations.

(g) This section does not apply to increases in assessed value caused solely by changes in the assessment ratio provided for in Section 401.

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

SEC. 144. Section 619 of the Revenue and Taxation Code, as added by Section 10.5 of Chapter 940 of the Statutes of 1997, is amended to read:

619. (a) Except as provided in subdivision (f), the assessor shall, upon or prior to completion of the local roll, do either of the following:

(1) Inform each assessee of real property on the local secured roll whose property's full value has increased over its full value for the prior year of the assessed value of that property as it shall appear on the completed local roll.

(2) Inform each assessee of real property on the local secured roll, or each assessee on the local secured roll and each assessee on the unsecured roll, of the assessed value of his or her real property or of both his or her real property and his or her personal property as it shall appear on the completed local roll.

(b) The information given by the assessor to the assessee pursuant to paragraph (1) or (2) of subdivision (a) shall include a notification of hearings by the county board of equalization, which shall include

the period during which assessment protests will be accepted and the place where they may be filed. The information shall also include an explanation of the stipulation procedure set forth in Section 1607 and the manner in which the assessee may request use of this procedure.

(c) In the case of an increase in a property's full value that is determined pursuant to paragraph (1) of subdivision (a) of Section 51 over the property's full value determined for the prior year in accordance with paragraph (2) of that same subdivision, the information shall also include the full cash value base of the property, compounded annually from the base year to the current year by the appropriate inflation factors.

(d) The information shall be furnished by the assessor to the assessee by regular United States mail directed to him or her at his or her latest address known to the assessor.

(e) Neither the failure of the assessee to receive the information nor the failure of the assessor to so inform the assessee shall in any way affect the validity of any assessment or the validity of any taxes levied pursuant thereto.

(f) This section shall not apply to annual increases in the valuation of property which reflect the inflation rate, not to exceed 2 percent, pursuant to the authority of subdivision (b) of Section 2 of Article XIII A of the California Constitution, for purposes of property tax limitation determinations.

(g) This section does not apply to increases in assessed value caused solely by changes in the assessment ratio provided for in Section 401.

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

SEC. 145. Section 3772.5 of the Revenue and Taxation Code is amended to read:

3772.5. For purposes of this chapter:

(a) "Low-income persons" means persons and families of low or moderate income, as defined by Section 50093 of the Health and Safety Code.

(b) "Nonprofit organization" means a nonprofit organization incorporated pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code for the purpose of acquisition of either of the following:

(1) Single-family or multifamily dwellings for rehabilitation and sale or rent to low-income persons, or for other use to serve low-income persons.

(2) Vacant land for construction of residential dwellings and subsequent sale or rent to low-income persons, for other use to serve low-income persons, or for dedication of that vacant land to public use.

(c) "Rehabilitation" means repairs and improvements to a substandard building, as defined in subdivision (f) of Section 17920 of the Health and Safety Code, necessary to make it a building which is not a substandard building.

SEC. 146. Section 7273 of the Revenue and Taxation Code is amended to read:

7273. In addition to the amounts otherwise provided for preparatory costs, the board shall charge an amount for its services in administering the transactions and use tax determined by the board, with the concurrence of the Department of Finance, as follows:

(a) Beginning with the 1993–94 fiscal year, the amount charged shall be based on the total special taxing jurisdiction costs reflected in the annual Budget Act. This amount comprises the categories of direct, shared, and central agency costs incurred by the board and shall include the following:

(1) The amount charged to each entity shall be based on the recommendations incorporated in the March 1992, report by the Auditor General entitled "The Board of Equalization Needs To Adjust Its Model For Setting Reimbursement Rates For Special Tax Jurisdictions."

(2) The amount charged may be adjusted in the current fiscal year to reflect the difference between the board's budgeted costs and any significant revised estimate of costs. Any adjustment shall be subject to budgetary controls included in the Budget Act. Prior to any adjustment, the Department of Finance shall notify the Chairperson of the Joint Legislative Budget Committee not later than 30 days prior to the effective date of the adjustment.

(3) For the 1995–96 fiscal year and each fiscal year thereafter, the amount charged shall be adjusted to reflect the difference between the board's recovered costs and the actual costs incurred by the board during the fiscal year two years prior.

(b) The board shall notify districts by June 1 of the amount that it anticipates will be assessed for the next fiscal year. The districts shall be notified of the actual amounts that will be assessed within 30 days after enactment of the Budget Act for that fiscal year.

(c) The amount charged a transactions and use tax district which becomes operative during the fiscal year shall be estimated for that fiscal year based on that district's proportionate share of direct, indirect, and shared costs.

(d) The amounts determined by subdivision (a) shall be deducted in equal amounts from the quarterly allocation of taxes collected by the board for a given district.

SEC. 147. Section 7284.6 of the Revenue and Taxation Code is amended to read:

7284.6. (a) It is unlawful for any local jurisdiction, including any employee, officer, authorized agent, or contractor of the local jurisdiction, to permit any utility user's tax return or copy thereof, or any records of any payment of utility user's tax, to be seen or examined by, or disclosed to, any person who is not one of the following:

(1) An employee, officer, authorized agent, or contractor of the local jurisdiction with administrative or compliance responsibilities relating to the utility user's tax ordinance.

(2) An employee of the utility or other company that is required to report or pay a utility user's tax to the local jurisdiction, and that furnished the records or information.

(b) Notwithstanding subdivision (a), this section does not prohibit a local jurisdiction from doing any of the following:

(1) Disclosing to a taxpayer information derived from the records of a utility or other utility service provider, if the information is used to calculate the utility user's tax of that taxpayer; or, disclosing that information in a tax collection action, provided that that information is subject to a protective order issued by a court.

(2) Disclosing to a tax officer of the state or federal government, pursuant to a written reciprocal agreement, information derived from the records of a utility or other utility service provider, if the information is used to calculate the local utility user's tax.

(3) Disclosing the gross utility user's tax revenues collected from the customers of a utility that is owned or operated by the local jurisdiction that imposes the utility user's tax.

(c) For purposes of this section:

(1) "Local jurisdiction" means any city, county, city and county, including any chartered city or city and county, district, or public or municipal corporation.

(2) "District" means any agency of the state, formed pursuant to general law or a special act, for the local performance of governmental or proprietary functions within limited boundaries.

(d) Any violation of this section is a misdemeanor and is punishable by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or by both, in the discretion of the court.

(e) This section shall not be construed to prohibit the divulging of information to the State Board of Equalization for the purposes of its administration of the Energy Resources Surcharge Law (Part 19 (commencing with Section 40001) of Division 2).

(f) Any information subject to subdivision (a) shall be exempt from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of the Government Code), except that nothing in this section shall be construed to prohibit the disclosure of records pursuant to Section 6254.16 of the Government Code.

SEC. 148. Section 7284.7 of the Revenue and Taxation Code is amended to read:

7284.7. (a) It is unlawful for any employee, officer, authorized agent or contractor of a local jurisdiction levying a utility user's tax, that obtains access to information contained in utility user tax records of a local jurisdiction, to disclose any information obtained from the records of a utility or other company required to report or pay a

utility user's tax to the local jurisdiction as a result of an audit, or any other information obtained in the course of an on-site audit, to any person who is not an employee, officer, authorized agent, or contractor of the local jurisdiction with administrative or compliance responsibilities relating to the utility user's tax ordinance.

(b) Any violation of this section is a misdemeanor and is punishable by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or by both, in the discretion of the court.

(c) This section shall not be construed to prohibit the divulging of information to the State Board of Equalization for the purposes of its administration of the Energy Resources Surcharge Law (Part 19 (commencing with Section 40001) of Division 2).

(d) Notwithstanding subdivisions (a) and (b), this section shall not be construed to prohibit an employee, officer, authorized agent, or contractor of a local jurisdiction levying a utility user's tax from doing any of the following:

(1) Disclosing to a taxpayer information derived from the records of a utility or other utility service provider, if the information is used to calculate the utility user's tax of that taxpayer; or, disclosing that information in a tax collection action, provided that the information is subject to a protective order issued by a court.

(2) Disclosing to a tax officer of the state or federal government, pursuant to a written reciprocal agreement, information obtained from the records of a utility or other utility service provider, if the information is used to calculate the local utility user's tax.

(3) Disclosing the gross utility user's tax revenues collected from the customers of a utility that is owned or operated by the local jurisdiction that imposes the utility user's tax.

(e) For purposes of this section:

(1) "Local jurisdiction" means any city, county, city and county, including any chartered city or city and county, district, or public or municipal corporation.

(2) "District" means any agency of the state, formed pursuant to general law or a special act, for the local performance of governmental or proprietary functions within limited boundaries.

(f) Nothing in this section shall be construed to create an exemption from disclosure under subdivision (k) of Section 6254 of the Government Code, or to prohibit the disclosure of records pursuant to Section 6254.16 of the Government Code or subdivision (i) of Section 6254 of the Government Code.

SEC. 149. Section 17053.5 of the Revenue and Taxation Code is amended to read:

17053.5. (a) In the case of qualified renters, there shall be allowed credits against their "net tax" (as defined in Section 17039). The credit shall be in the amount of one hundred twenty dollars ($120) for married couples filing joint returns, heads of household

and surviving spouses (as defined in Section 17046), and sixty dollars ($60) for other individuals.

Except as provided in subdivision (b), a husband and wife shall receive but one credit under this section. If the husband and wife file separate returns, the credit may be taken by either or equally divided between them, except as follows:

(1) If one spouse was a resident for the entire taxable year and the other spouse was a nonresident for part or all of the taxable year, the resident spouse shall be allowed one-half the credit allowed to married persons and the nonresident spouse shall be permitted one-half the credit allowed to married persons, prorated as provided in subdivision (e).

(2) If both spouses were nonresidents for part of the taxable year, the credit allowed to married persons shall be divided equally between them subject to the proration provided in subdivision (e).

(b) In the case of a husband and wife, if each spouse maintained a separate place of residence and resided in this state during the entire taxable year, each spouse will be allowed one-half the full credit allowed to married persons provided in subdivision (a).

(c) For purposes of this section, a "qualified renter" means an individual who:

(1) Was a resident of this state, as defined in Section 17014, and

(2) Rented and occupied premises in this state which constituted his or her principal place of residence during at least 50 percent of the taxable year.

(d) The term "qualified renter" does not include any of the following:

(1) An individual who for more than 50 percent of the taxable year rented and occupied premises which were exempt from property taxes, except that an individual, otherwise qualified, shall be deemed a qualified renter if he or she or his or her landlord pays possessory interest taxes, or the owner of those premises makes payments in lieu of property taxes which are substantially equivalent to property taxes paid on properties of comparable market value.

(2) An individual whose principal place of residence for more than 50 percent of the taxable year is with any other person who claimed that individual as a dependent for income tax purposes.

(3) An individual who has been granted or whose spouse has been granted the homeowners' property tax exemption during the taxable year. This paragraph shall not apply in the case of an individual whose spouse has been granted the homeowners' property tax exemption if each spouse maintained a separate residence for the entire taxable year.

(e) Any otherwise qualified renter who is a nonresident for any portion of the taxable year shall claim the credits set forth in subdivision (a) at the rate of one-twelfth of those credits for each full month that individual resided within this state during the taxable year.

(f) Every person claiming the credit provided in this section shall, as part of that claim, and under penalty of perjury, furnish that information as the Franchise Tax Board prescribes on a form supplied by the board.

(g) The credit provided in this section shall be claimed on returns in the form as the Franchise Tax Board may from time to time prescribe.

(h) For the purposes of this section, the term "premises" means a house or a dwelling unit used to provide living accommodations in a building or structure and the land incidental thereto, but does not include land only, except in the case where the dwelling unit is a mobilehome. The credit shall not be allowed for any taxable year for the rental of land upon which a mobilehome is located if the mobilehome has been granted a homeowners' exemption under Section 218 in that year.

(i) In the case of qualified renters whose credits provided in this section exceed their tax liability computed under this part the excess shall be credited against other amounts due, if any, from the qualified renter and the balance, if any, shall be refunded to the qualified renter.

(j) This section shall become operative on January 1, 1998, and shall apply to any taxable year beginning on or after January 1, 1998.

SEC. 150. Section 18804 of the Revenue and Taxation Code is amended to read:

18804. (a) This article shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2001, deletes or extends that date.

(b) If, in any calendar year, the Franchise Tax Board estimates by September 1 that contributions described in this article made on returns filed in that calendar year will be less than one hundred thousand dollars ($100,000) for taxable years beginning in 1999 or less than two hundred fifty thousand dollars ($250,000) for taxable years beginning in 2000, as may be applicable, then this article is repealed with respect to taxable years beginning on and after January 1 of that calendar year. The Franchise Tax Board shall estimate the annual contribution amount by September 1 of each year using the actual amounts known to be contributed and an estimate of the remaining year's contributions.

(c) Notwithstanding the repeal of this article, any contribution amounts designated pursuant to this article prior to its repeal shall continue to be transferred and disbursed in accordance with this article as in effect immediately prior to that repeal.

SEC. 151. Section 18872 of the Revenue and Taxation Code is amended to read:

18872. The Legislature finds and declares that it is important to inform taxpayers that they may make voluntary contributions to certain funds or programs, as provided on the state income tax return. The Legislature further finds and declares that many

taxpayers remain unaware of the voluntary contribution check-offs on the state income tax return. Therefore, it is the intent of the Legislature to encourage all persons who prepare state income tax returns to inform their clients in writing, prior to the completion of any tax return, that they may make a contribution to any voluntary contribution check-off on the state income tax return if they so choose.

SEC. 152. 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 of, 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. 153. Section 19271 of the Revenue and Taxation Code is amended to read:

19271. (a) (1) For purposes of this article:

(A) "Child support" means support of a child, spouse, or family as provided in Section 150 of the Family Code.

(B) "Child support delinquency" means a child support obligation that may include or be limited to interest, fees, or penalties, on which payment then due has not been received following the expiration of 90 days from the date payment is due.

(C) "Earnings" may include the items described in Section 5206 of the Family Code.

(2) 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. 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.

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

(4) 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.

(5) 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 any obligated parent 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 any delinquency 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) 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.

(E) 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.

(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) 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.

(h) 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).

(i) 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. 154. Section 19533 of the Revenue and Taxation Code is amended 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. 155. Section 19721.6 of the Revenue and Taxation Code is amended and renumbered to read:

19271.6. (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 from the date of receipt.

(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) On or before 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. 156. Section 41136 of the Revenue and Taxation Code is amended to read:

41136. Funds in the State Emergency Telephone Number Account shall, when appropriated by the Legislature, be spent solely for the following purposes:

(a) To pay refunds authorized by this part.

(b) To pay the State Board of Equalization for the cost of the administration of this part.

(c) To pay the Department of General Services for its costs in administration of the "911" emergency telephone number system.

(d) To pay bills submitted to the Department of General Services by service suppliers or communications equipment companies for the installation and ongoing expenses for the following communications services supplied local agencies in connection with the "911" emergency phone number system:

(1) A basic system.

(2) A basic system with telephone central office identification.

(3) A system employing automatic call routing.

(4) Approved incremental costs.

(e) To pay claims of local agencies for approved incremental costs, not previously compensated for by another governmental agency.

(f) To pay claims of local agencies for incremental costs and amounts, not previously compensated for by another governmental agency, incurred prior to the effective date of this part, for the installation and ongoing expenses for the following communication services supplied in connection with the "911" emergency phone number system:

(1) A basic system.

(2) A basic system with telephone central office identification.

(3) A system employing automatic call routing.

(4) Approved incremental costs. Incremental costs shall not be allowed unless the costs are concurred in by the Communications Division.

(g) To pay the Division of Telecommunications of the Department of General Services for the costs associated with the pilot program authorized by Article 6.5 (commencing with Section 53125) of Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code.

SEC. 157. Section 1088.7 of the Unemployment Insurance Code is amended to read:

1088.7. 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. 158. 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 permittee, 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. 159. Section 12523.6 of the Vehicle Code is amended to read:

12523.6. (a) (1) On and after March 1, 1998, no person who is employed primarily as a driver of a motor vehicle for hire that is used for the transportation of persons with developmental disabilities, as defined in subdivision (a) of Section 4512 of the Welfare and Institutions Code, shall operate that motor vehicle unless that person

has in his or her possession a valid driver's license of the appropriate class endorsed for passenger transportation and a valid special driver certificate issued by the department.

(2) This subdivision only applies to a person who is employed by a business or a nonprofit organization or agency.

(b) The special driver certificate shall be issued only to an applicant who meets all of the following requirements:

(1) The applicant has cleared a criminal history background check by the Department of Justice and, if applicable, by the Federal Bureau of Investigation. Any required fingerprinting undertaken for purposes of the criminal history background check shall be conducted by the Department of the California Highway Patrol. Applicant fingerprint forms shall be processed and returned to the area office of the Department of the California Highway Patrol from which they originated not later than 15 working days from the date on which the fingerprint forms were received by the Department of Justice, unless circumstances, other than the administrative duties of the Department of Justice, warrant further investigation. Upon implementation of an electronic fingerprinting system with terminals located statewide and managed by the Department of Justice, the Department of Justice shall ascertain the information required pursuant to this subdivision within three working days.

(2) The applicant has paid, in addition to the fees authorized in Section 2427, a fee of twenty-five dollars ($25) for an original certificate and twelve dollars ($12) for the renewal of that certificate to the Department of the California Highway Patrol.

(c) A certificate issued under this section shall not be deemed a certification to operate a particular vehicle that otherwise requires a driver's license or endorsement for a particular class under this code.

(d) On or after March 1, 1998, no person who operates a business or a nonprofit organization or agency shall employ a person who is employed primarily as a driver of a motor vehicle for hire that is used for the transportation of persons with developmental disabilities unless the employed person operates the motor vehicle in compliance with subdivision (a).

(e) Nothing in this section precludes an employer of persons who are occasionally used as drivers of motor vehicles for the transportation of persons with developmental disabilities from requiring those persons, as a condition of employment, to obtain a special driver certificate pursuant to this section or precludes any volunteer driver from applying for a special driver certificate.

(f) As used in this section, a person is employed primarily as a driver if that person performs at least 50 percent of his or her time worked including, but not limited to, time spent assisting persons onto and out of the vehicle, or at least 20 hours a week, whichever is less, as a compensated driver of a motor vehicle for hire for the transportation of persons with developmental disabilities.

(g) This section does not apply to any person who has successfully completed a background investigation prescribed by law, including, but not limited to, health care transport vehicle operators, or to the operator of a taxicab regulated pursuant to Section 21100. This section does not apply to a person who holds a valid certificate, other than a farm labor vehicle driver certificate, issued under Section 12517.4 or 12527. This section does not apply to a driver who provides transportation on a noncommercial basis to persons with developmental disabilities.

SEC. 160. Section 14602.7 of the Vehicle Code is amended 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 within 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. 161. Section 1811 of the Water Code is amended to read:

1811. As used in this article, the following terms shall have the following meanings:

(a) "Bona fide transferor" means a person or public agency as defined in Section 20009 of the Government Code with a contract for sale of water that may be conditioned upon the acquisition of conveyance facility capacity to convey the water that is the subject of the contract.

(b) "Emergency" means a sudden occurrence such as a storm, flood, fire, or an unexpected equipment outage impairing the ability of a person or public agency to make water deliveries.

(c) "Fair compensation" means the reasonable charges incurred by the owner of the conveyance system, including capital, operation, maintenance, and replacement costs, increased costs from any necessitated purchase of supplemental power, and including reasonable credit for any offsetting benefits for the use of the conveyance system.

(d) "Replacement costs" mean the reasonable portion of costs associated with material acquisition for the correction of irreparable wear or other deterioration of conveyance facility parts that have an anticipated life that is less than the conveyance facility repayment period and which costs are attributable to the proposed use.

(e) "Unused capacity" means space that is available within the operational limits of the conveyance system and that the owner is not using during the period for which the transfer is proposed and which space is sufficient to convey the quantity of water proposed to be transferred.

SEC. 162. Section 13274 of the Water Code, as amended by Section 154 of Chapter 124 of the Statutes of 1996, is amended to read:

13274. (a) (1) The state board or a regional board, upon receipt of applications for waste discharge requirements for discharges of dewatered, treated, or chemically fixed sewage sludge and other biological solids, shall prescribe general waste discharge requirements for that sludge and those other solids. General waste discharge requirements shall replace individual waste discharge requirements for sewage sludge and other biological solids, and their prescription shall be considered to be a ministerial action.

(2) The general waste discharge requirements shall set minimum standards for agronomic applications of sewage sludge and other biological solids and the use of that sludge and those other solids as a soil amendment or fertilizer in agriculture, forestry, and surface mining reclamation, and may permit the transportation of that sludge and those other solids and the use of that sludge and those other solids at more than one site. The requirements shall include provisions to mitigate significant environmental impacts, potential soil erosion, odors, the degradation of surface water quality or fish or wildlife habitat, the accidental release of hazardous substances, and any potential hazard to the public health or safety.

(b) The state board or a regional board, in prescribing general waste discharge requirements pursuant to this section, shall comply with Division 13 (commencing with Section 21000) of the Public Resources Code and guidelines adopted pursuant to that division, and shall consult with the State Air Resources Board, the Department of Food and Agriculture, and the California Integrated Waste Management Board.

(c) The state board or a regional board may charge a reasonable fee to cover the costs incurred by the board in the administration of the application process relating to the general waste discharge requirements prescribed pursuant to this section.

(d) Notwithstanding any other provision of law, except as specified in subdivisions (f) to (i), inclusive, general waste discharge requirements prescribed by a regional board pursuant to this section supersede regulations adopted by any other state agency to regulate sewage sludge and other biological solids applied directly to agricultural lands at agronomic rates.

(e) The state board or a regional board shall review general waste discharge requirements for possible amendment upon the request of any state agency, including, but not limited to, the Department of Food and Agriculture and the State Department of Health Services, if the board determines that the request is based on new information.

(f) Nothing in this section is intended to affect the jurisdiction of the California Integrated Waste Management Board to regulate the handling of sewage sludge or other biological solids for composting, deposit in a landfill, or other use.

(g) Nothing in this section is intended to affect the jurisdiction of the State Air Resources Board or an air pollution control district or air quality management district to regulate the handling of sewage sludge or other biological solids for incineration.

(h) Nothing in this section is intended to affect the jurisdiction of the Department of Food and Agriculture in enforcing Sections 14591 and 14631 of the Food and Agricultural Code and any regulations adopted pursuant to those sections, regarding the handling of sewage sludge and other biological solids sold or used as fertilizer or as a soil amendment.

(i) Nothing in this section restricts the authority of a local government agency to regulate the application of sewage sludge and other biological solids to land within the jurisdiction of that agency, including, but not limited to, the planning authority of the Delta Protection Commission, the resource management plan of which is required to be implemented by local government general plans.

SEC. 163. Section 827.6 of the Welfare and Institutions Code is amended to read:

827.6. (a) Notwithstanding any other provision of law, the presiding judge of the juvenile court may authorize a law enforcement agency to disclose only the name and other information necessary to identify a minor who is lawfully sought for arrest as a suspect in the commission of any felony listed in subdivision (b) of Section 707 where the disclosure is imperative for the apprehension of the minor. The court order shall be solely for the limited purpose of enabling law enforcement to apprehend the minor, and shall contain the exact nature of the data to be released. In determining whether to authorize the release of information pursuant to this section, the court shall balance the confidentiality interests of the minor under this chapter, the due diligence of law enforcement to apprehend the minor prior to the filing of a petition for disclosure, and the public safety interests raised by the facts of the minor's case.

(b) When seeking an order of disclosure pursuant to this section, in addition to any other information requested by the presiding judge, a law enforcement agency shall submit to the court a verified declaration and any supporting exhibits indicating the probable cause for the lawful arrest of the minor, efforts to locate the minor, including, but not limited to, persons contacted, surveillance activity, search efforts, any other pertinent information, all evidence regarding why the order is critical, including a minor's danger to himself or herself, the minor's danger to others, the minor's flight risk, and any other information indicating the urgency for a court order.

SEC. 164. 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, or 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 representation or relationship of that type 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 understood 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 does 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 4900) 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 does 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 that type of 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 that 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 4900) 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. 165. Section 3 of Chapter 708 of the Statutes of 1997 is amended to read:

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 lesser of one-quarter of the required fiscal assessment or 5 percent of the total revenue limit of the district commencing with the 1997–98 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. 166. Any section of any act enacted by the Legislature during the 1998 calendar year that takes effect on or before January 1, 1999, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act that is enacted by the Legislature during the 1998 calendar year and takes effect on or before January 1, 1999, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

CHAPTER 486

An act to add Division 14 (commencing with Section 141000) to the Public Utilities Code, relating to transportation.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. This act shall be known and may be cited as the Coachella Valley Intermodal Transportation Authority Act.

SEC. 2. Division 14 (commencing with Section 141000) is added to the Public Utilities Code, to read:

DIVISION 14. COACHELLA VALLEY INTERMODAL TRANSPORTATION AUTHORITY

141000. For purposes of this division, the following terms have the following meanings:

(a) The "authority" is the Coachella Valley Intermodal Transportation Authority and its 11 districts created under this division.

(b) The "board" is the board of directors of the authority, appointed under Section 141010.

(c) The "district" may be any of the following:

(1) The incorporated boundary of any one of the Coachella Valley members of the Coachella Valley Association of Governments.

(2) The unincorporated area of Riverside County within the Coachella Valley.

(3) The incorporated boundary of the City of Blythe.

(d) The "district board" is the legislative body of the district.

141005. The Coachella Valley Intermodal Transportation Authority is hereby created to serve as the governing agency for its 11 separate districts, recognized in that capacity by the Coachella Valley Association of Governments, the Riverside County Transportation Commission, and the United States Department of Transportation, for the following purposes:

(a) Serving as the primary authority for managing and operating intermodal passenger transportation and related infrastructure.

(b) Serving as the primary authority for intermodal less-than-carload freight transportation and related infrastructure within the Coachella Valley and eastern Riverside County.

(c) Serving as the primary authority for facilities and services and related infrastructure.

(d) Establishing, maintaining, and operating an independent political and administrative structure by which to implement passenger and freight transportation initiatives.

(e) Completing planning and environmental studies to ascertain project feasibility.

(f) Being available for designation as the lead agency for purposes of environmental review, entitlement permitting, and public participation.

(g) Acquiring, by grant, purchase, condemnation, gift, devise, or lease, and holding, using, selling, leasing or disposing of, any real and personal property necessary for the full exercise, or convenient or useful for the carrying on of, any of the authority's powers.

(h) Fixing rates, parking fees, charges, or rents for the use of any facilities acquired, constructed, operated, or maintained by the authority or any of its districts, and modifying the same at its pleasure, subject to any contractual obligation that may be entered into by the authority with respect to the fixing of those rates, fees, charges, or rents.

(i) Obtaining funds for, and sustaining the planning, development, maintenance, and operation of, the Coachella Valley and City of Blythe Intermodal Transportation Center.

(j) Accepting gifts, subventions, grants, rebates, and subsidies from any source.

(k) Entering into indentures.

(*l*) Issuing tax-exempt revenue bonds and coupons.

(m) Spending moneys and incurring indebtedness to fulfill its purposes.

141010. (a) The authority shall be governed by the Executive Committee of the Coachella Valley Association of Governments.

(b) A district shall be governed by the elected legislative body of that particular political entity.

141015. The board and all district boards shall do all of the following:

(a) Elect a chairperson, vice chairperson, and secretary.

(b) Supervise and regulate all facilities owned by, and all operations of, the authority or the district, whichever is applicable.

(c) Enter into contracts necessary for the full exercise of the power of the authority or district.

(d) Conduct an annual audit of all accounts of the authority or district.

141020. All meetings of the board or the district boards shall be conducted in accordance with Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code.

141025. No officer or employee of the authority or any district shall in any manner be interested, directly or indirectly, in any contract awarded, or to be awarded by, the board or district boards, or in the profits to be derived therefrom contrary to the provisions of Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code.

141040. (a) The authority or any of the districts, either in conjunction with the authority or any other of the districts or

individually, may issue general and special revenue bonds for the acquisition, construction, or completion of any works, equipment, materials, supplies, properties, or structures necessary or convenient to carry out the objects and purposes of this division.

(b) The total amount of bonds outstanding shall not be in excess of one hundred million dollars ($100,000,000) at any one time per district.

(c) Each separate improvement shall be designated as a "project" and the purpose, nature, and extent thereof shall be described in general terms prior to the issuance of any bonds.

(d) The validity of the authorization and issuance of any revenue bonds by the authority or the districts is not dependent on nor affected in any way by any of the following:

(1) Proceedings taken by the authority or the districts for the acquisition, construction, or completion of any improvement or any part thereof.

(2) Any contracts made by the authority or the districts for the acquisition, construction, or completion of any improvements.

(3) The failure to complete any improvements for which bonds are authorized to be issued.

(e) The authority or any district shall issue revenue bonds in its name only. These bonds shall constitute obligations of the authority or district only, and neither the payment of principal or interest of any bond constitutes a debt, liability, or obligation of the State of California. The authority or district shall determine the time, form, and manner of the issuance of revenue bonds.

(f) The authority or the districts may enter into indentures providing the aggregate principal amount, date or dates, maturities, interest rate, denomination, form, registration transfer, and interchange of the bonds and coupons and the terms and conditions upon which the bonds and coupons shall be executed, issued, secured, sold, paid, redeemed, funded, and refunded. Reference to this division shall be made on the face of the bonds to those indentures by its date of adoption, or the apparent date, on the face thereof and into the body of these bonds and their appurtenant coupons. Each taker and subsequent holder of these bonds or coupons, whether the coupons are attached or detached from the bonds, has recourse to all of the provisions of the indenture and of this division, and is bound thereby.

141045. (a) The authority may acquire, construct, own, operate, control, or use right-of-way, rail lines, bus lines, stations, platforms, switches, yards, terminals, and any and all other facilities, equipment, and infrastructure necessary and convenient to provide intermodal transportation services, together with all physical structures necessary or convenient for the access of persons and vehicles thereto.

(b) The authority or districts may acquire any interest in, or rights to, the joint use of any or all of the things listed in subdivision (a).

However, installations in any street, road, or other property devoted to a public use shall be subject to consent of the governing body in charge of that public use.

141050. The authority or the districts shall not interfere with, or exercise any control over, any transit facilities now or hereafter owned and operated wholly or partially within the district by any city or public agency, unless by consent of the city or public agency, and upon any terms that are mutually agreed upon between the board and the city or public agency.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because certain 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, as to other costs that may be incurred, 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 487

An act to amend Section 11836 of the Health and Safety Code, and to amend Section 23103.5 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 11836 of the Health and Safety Code is amended to read:

11836. (a) The department shall have the sole authority to issue, deny, suspend, or revoke the license of a driving-under-the-influence program. As used in this chapter "program" means any firm, partnership, association, corporation, local governmental entity, agency or place that has been initially recommended by the county board of supervisors and that is subsequently licensed by the department to provide alcohol or drug recovery services to any of the following:

(1) A person whose license to drive has been administratively suspended or revoked for, or who is convicted of, a violation of Section 23152 or 23153 of the Vehicle Code, and admitted to a

program pursuant to Section 13352, 13353.4, 23161, 23166, 23171, 23176, 23181, 23186, or 23191 of the Vehicle Code.

(2) A person who is convicted of a violation of subdivision (b), (c), (d), or (e) of Section 655 of the Harbors and Navigation Code, or of Section 655.4 of that code, and admitted to the program pursuant to Section 668 of that code.

(3) A person who has pled guilty or nolo contendere to a charge of a violation of Section 23103 of the Vehicle Code, under the conditions set forth in subdivision (c) of Section 23103.5 of the Vehicle Code, and who has been admitted to the program under subdivision (e) of Section 23103.5 of the Vehicle Code.

(b) If a firm, partnership, corporation, association, local government entity, agency, or place has, or is applying for, more than one license, the department shall treat each licensed program, or each program seeking licensure, as belonging to a separate firm, partnership, corporation, association, local government entity, agency, or place for the purposes of this chapter.

SEC. 2. Section 11836 of the Health and Safety Code is amended to read:

11836. (a) The department shall have the sole authority to issue, deny, suspend, or revoke the license of a driving-under-the-influence program. As used in this chapter "program" means any firm, partnership, association, corporation, local governmental entity, agency or place that has been initially recommended by the county board of supervisors and that is subsequently licensed by the department to provide alcohol or drug recovery services to any of the following:

(1) A person whose license to drive has been administratively suspended or revoked for, or who is convicted of, a violation of Section 23152 or 23153 of the Vehicle Code, and admitted to a program pursuant to Section 13352, 13353.4, 23538, 23542, 23548, 23552, 23556, 23562, or 23568 of the Vehicle Code.

(2) A person who is convicted of a violation of subdivision (b), (c), (d), or (e) of Section 655 of the Harbors and Navigation Code, or of Section 655.4 of that code, and admitted to the program pursuant to Section 668 of that code.

(3) A person who has pled guilty or nolo contendere to a charge of a violation of Section 23103 of the Vehicle Code, under the conditions set forth in subdivision (c) of Section 23103.5 of the Vehicle Code, and who has been admitted to the program under subdivision (e) of Section 23103.5 of the Vehicle Code.

(b) If a firm, partnership, corporation, association, local government entity, agency, or place has, or is applying for, more than one license, the department shall treat each licensed program, or each program seeking licensure, as belonging to a separate firm, partnership, corporation, association, local government entity, agency, or place for the purposes of this chapter.

SEC. 3. Section 23103.5 of the Vehicle Code is amended to read:

23103.5. (a) When the prosecution agrees to a plea of guilty or nolo contendere to a charge of a violation of Section 23103 in satisfaction of, or as a substitute for, an original charge of a violation of Section 23152, the prosecution shall state for the record a factual basis for the satisfaction or substitution, including whether or not there had been consumption of any alcoholic beverage or ingestion or administration of any drug, or both, by the defendant in connection with the offense. The statement shall set forth the facts that show whether or not there was a consumption of any alcoholic beverage or the ingestion or administration of any drug by the defendant in connection with the offense.

(b) The court shall advise the defendant, prior to the acceptance of the plea offered pursuant to a factual statement pursuant to subdivision (a), of the consequences of a conviction of a violation of Section 23103 as set forth in subdivision (c).

(c) If the court accepts the defendant's plea of guilty or nolo contendere to a charge of a violation of Section 23103 and the prosecutor's statement under subdivision (a) states that there was consumption of any alcoholic beverage or the ingestion or administration of any drugs by the defendant in connection with the offense, the resulting conviction shall be a prior offense for the purposes of Section 23165, 23170, 23175, 23185, 23190, or 23200, as specified in those sections.

(d) The court shall notify the Department of Motor Vehicles of each conviction of Section 23103 that is required under this section to be a prior offense for purposes of Section 23165, 23170, 23175, 23185, 23190, or 23200.

(e) If the court places the defendant on probation for a conviction of Section 23103 that is required under this section to be a prior offense for purposes of Section 23165, 23170, 23175, 23185, 23190, or 23200, the court shall order the defendant to enroll in an alcohol and drug education program licensed under Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code and complete, at a minimum, the educational component of that program, as a condition of probation. If compelling circumstances exist that mitigate against including the education component in the order, the court may make an affirmative finding to that effect. The court shall state the compelling circumstances and the affirmative finding on the record, and may, in these cases, exclude the educational component from the order.

(f) The Department of Motor Vehicles shall include in its annual report to the Legislature under Section 1821 an evaluation of the effectiveness of the program described in subdivision (e) as to treating persons convicted of violating Section 23103.

SEC. 4. Section 23103.5 of the Vehicle Code is amended to read:

23103.5. (a) When the prosecution agrees to a plea of guilty or nolo contendere to a charge of a violation of Section 23103 in satisfaction of, or as a substitute for, an original charge of a violation

of Section 23152, the prosecution shall state for the record a factual basis for the satisfaction or substitution, including whether or not there had been consumption of any alcoholic beverage or ingestion or administration of any drug, or both, by the defendant in connection with the offense. The statement shall set forth the facts that show whether or not there was a consumption of any alcoholic beverage or the ingestion or administration of any drug by the defendant in connection with the offense.

(b) The court shall advise the defendant, prior to the acceptance of the plea offered pursuant to a factual statement pursuant to subdivision (a), of the consequences of a conviction of a violation of Section 23103 as set forth in subdivision (c).

(c) If the court accepts the defendant's plea of guilty or nolo contendere to a charge of a violation of Section 23103 and the prosecutor's statement under subdivision (a) states that there was consumption of any alcoholic beverage or the ingestion or administration of any drugs by the defendant in connection with the offense, the resulting conviction shall be a prior offense for the purposes of Section 23540, 23546, 23550, 23560, 23566, or 23622, as specified in those sections.

(d) The court shall notify the Department of Motor Vehicles of each conviction of Section 23103 that is required under this section to be a prior offense for purposes of Section 23540, 23546, 23550, 23560, 23566, or 23622.

(e) If the court places the defendant on probation for a conviction of Section 23103 that is required under this section to be a prior offense for purposes of Section 23540, 23546, 23550, 23560, 23566, or 23622, the court shall order the defendant to enroll in an alcohol and drug education program licensed under Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code and complete, at a minimum, the educational component of that program, as a condition of probation. If compelling circumstances exist that mitigate against including the education component in the order, the court may make an affirmative finding to that effect. The court shall state the compelling circumstances and the affirmative finding on the record, and may, in these cases, exclude the educational component from the order.

(f) The Department of Motor Vehicles shall include in its annual report to the Legislature under Section 1821 an evaluation of the effectiveness of the program described in subdivision (e) as to treating persons convicted of violating Section 23103.

SEC. 5. Section 2 of this bill incorporates amendments to Section 11836 of the Health and Safety Code proposed by both this bill and SB 1186. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, but this bill becomes operative first, (2) each bill amends Section 11836 of the Health and Safety Code, and (3) this bill is enacted after SB 11836, in which case Section 11836 of the Health and Safety Code, as

amended by Section 1 of this bill, shall remain operative only until the operative date of SB 1186, at which time Section 2 of this bill shall become operative.

SEC. 6. Section 4 of this bill incorporates amendments to Section 23103.5 of the Vehicle Code proposed by both this bill and SB 1186. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, but this bill becomes operative first, (2) each bill amends Section 23103.5 of the Vehicle Code, and (3) this bill is enacted after SB 1186, in which case Section 23103.5 of the Vehicle Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of SB 1186, at which time Section 4 of this bill shall become operative.

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

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

CHAPTER 488

An act to amend Section 530.5 of the Penal Code, relating to personal information.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 530.5 of the Penal Code is amended to read:

530.5. (a) 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 for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, or medical information 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 either by imprisonment in a county jail not to exceed one year, a fine not to exceed one thousand dollars ($1,000), or both that imprisonment and fine, or by imprisonment in the state prison, a fine not to exceed ten thousand dollars ($10,000), or both that imprisonment and fine.

(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.

(c) In any case in which a person willfully obtains personal identifying information of another person without the authorization of that person, and uses that information to commit a crime in addition to a violation of subdivision (a), and is convicted of that crime, the court records shall reflect that the person whose identity was falsely used to commit the crime did not commit the crime.

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 489

An act to amend Section 48918 of the Education Code, relating to education.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 48918 of the Education Code is amended to read:

48918. The governing board of each school district shall establish rules and regulations governing procedures for the expulsion of pupils. These procedures shall include, but are not necessarily limited to, all of the following:

(a) The pupil shall be entitled to a hearing to determine whether the pupil should be expelled. An expulsion hearing shall be held within 30 schooldays after the date the principal or the superintendent of schools determines that the pupil has committed any of the acts enumerated in Section 48900, unless the pupil requests, in writing, that the hearing be postponed. The adopted

rules and regulations shall specify that the pupil is entitled to at least one postponement of an expulsion hearing, for a period of not more than 30 calendar days. Any additional postponement may be granted at the discretion of the governing board.

Within 10 schooldays after the conclusion of the hearing, the governing board shall decide whether to expel the pupil, unless the pupil requests in writing that the decision be postponed. If the hearing is held by a hearing officer or an administrative panel, or if the district governing board does not meet on a weekly basis, the governing board shall decide whether to expel the pupil within 40 schooldays after the date of the pupil's removal from his or her school of attendance for the incident for which the recommendation for expulsion is made by the principal or the superintendent, unless the pupil requests in writing that the decision be postponed.

If compliance by the governing board with the time requirements for the conducting of an expulsion hearing under this subdivision is impracticable during the regular school year, the superintendent of schools or the superintendent's designee may, for good cause, extend the time period for the holding of the expulsion hearing for an additional five schooldays. If compliance by the governing board with the time requirements for the conducting of an expulsion hearing under this subdivision is impractical due to a summer recess of governing board meetings of more than two weeks, the days during the recess period shall not be counted as schooldays in meeting the time requirements. The days not counted as schooldays in meeting the time requirements for an expulsion hearing because of a summer recess of governing board meetings shall not exceed 20 schooldays, as defined in subdivision (c) of Section 48925, and unless the pupil requests in writing that the expulsion hearing be postponed, the hearing shall be held not later than 20 calendar days prior to the first day of school for the school year. Reasons for the extension of the time for the hearing shall be included as a part of the record at the time the expulsion hearing is conducted. Upon the commencement of the hearing, all matters shall be pursued and conducted with reasonable diligence and shall be concluded without any unnecessary delay.

(b) Written notice of the hearing shall be forwarded to the pupil at least 10 calendar days prior to the date of the hearing. The notice shall include all of the following:

(1) The date and place of the hearing.

(2) A statement of the specific facts and charges upon which the proposed expulsion is based.

(3) A copy of the disciplinary rules of the district that relate to the alleged violation.

(4) A notice of the parent, guardian, or pupil's obligation pursuant to subdivision (b) of Section 48915.1.

(5) Notice of the opportunity for the pupil or the pupil's parent or guardian to appear in person or employ and be represented by

counsel, to inspect and obtain copies of all documents to be used at the hearing, to confront and question all witnesses who testify at the hearing, to question all other evidence presented, and to present oral and documentary evidence on the pupil's behalf, including witnesses. In a hearing in which a pupil is alleged to have committed or attempted to commit a sexual assault as specified in subdivision (n) of Section 48900 or committing a sexual battery as defined in subdivision (n) of Section 48900, a complaining witness shall be given five days' notice before being called to testify, and shall be entitled to have up to two adult support persons, including, but not limited to, a parent, guardian, or legal counsel, present during their testimony. Before a complaining witness testifies, support persons shall be admonished that the hearing is confidential. Nothing in this subdivision shall preclude the person presiding over an expulsion hearing from removing a support person whom the presiding person finds is disrupting the hearing. If one or both of the support persons is also a witness, the provisions of Section 868.5 of the Penal Code shall be followed for the hearing.

(c) Notwithstanding Section 54593 of the Government Code and Section 35145, the governing board shall conduct a hearing to consider the expulsion of a pupil in a session closed to the public, unless the pupil requests, in writing, at least five days before the date of the hearing, that the hearing be conducted at a public meeting. Regardless of whether the expulsion hearing is conducted in a closed or public session, the governing board may meet in closed session for the purpose of deliberating and determining whether the pupil should be expelled.

If the governing board or the hearing officer or administrative panel appointed under subdivision (d) to conduct the hearing admits any other person to a closed deliberation session, the parent or guardian of the pupil, the pupil, and the counsel of the pupil also shall be allowed to attend the closed deliberations.

If the hearing is to be conducted at a public meeting, and there is a charge of committing or attempting to commit a sexual assault as defined in subdivision (n) of Section 48900 or committing a sexual battery as defined in subdivision (n) of Section 48900, a complaining witness shall have the right to have his or her testimony heard in a session closed to the public when testifying at a public meeting would threaten serious psychological harm to the complaining witness and there are no alternative procedures to avoid the threatened harm, including, but not limited to, videotaped deposition or contemporaneous examination in another place communicated to the hearing room by means of closed-circuit television.

(d) Instead of conducting an expulsion hearing itself, the governing board may contract with the county hearing officer, or with the Office of Administrative Hearings of the State of California pursuant to Chapter 14 (commencing with Section 27720) of Part 3 of Division 2 of Title 3 of the Government Code and Section 35207,

for a hearing officer to conduct the hearing. The governing board may also appoint an impartial administrative panel of three or more certificated persons, none of whom is a member of the board or employed on the staff of the school in which the pupil is enrolled. The hearing shall be conducted in accordance with all of the procedures established under this section.

(e) Within three schooldays after the hearing, the hearing officer or administrative panel shall determine whether to recommend the expulsion of the pupil to the governing board. If the hearing officer or administrative panel decides not to recommend expulsion, the expulsion proceedings shall be terminated and the pupil immediately shall be reinstated and permitted to return to a classroom instructional program, any other instructional program, a rehabilitation program, or any combination of these programs. Placement in one or more of these programs shall be made by the superintendent of schools or the superintendent's designee after consultation with school district personnel, including the pupil's teachers, and the pupil's parent or guardian. The decision not to recommend expulsion shall be final.

(f) If the hearing officer or administrative panel recommends expulsion, findings of fact in support of the recommendation shall be prepared and submitted to the governing board. All findings of fact and recommendations shall be based solely on the evidence adduced at the hearing. If the governing board accepts the recommendation calling for expulsion, acceptance shall be based either upon a review of the findings of fact and recommendations submitted by the hearing officer or panel or upon the results of any supplementary hearing conducted pursuant to this section that the governing board may order.

The decision of the governing board to expel a pupil shall be based upon substantial evidence relevant to the charges adduced at the expulsion hearing or hearings. Except as provided in this section, no evidence to expel shall be based solely upon hearsay evidence. The governing board or the hearing officer or administrative panel may, upon a finding that good cause exists, determine that the disclosure of either the identity of a witness or the testimony of that witness at the hearing, or both, would subject the witness to an unreasonable risk of psychological or physical harm. Upon this determination, the testimony of the witness may be presented at the hearing in the form of sworn declarations which shall be examined only by the governing board or the hearing officer or administrative panel. Copies of these sworn declarations, edited to delete the name and identity of the witness, shall be made available to the pupil.

(g) A record of the hearing shall be made. The record may be maintained by any means, including electronic recording, so long as a reasonably accurate and complete written transcription of the proceedings can be made.

(h) Technical rules of evidence shall not apply to the hearing, but relevant evidence may be admitted and given probative effect only if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. A decision of the governing board to expel shall be supported by substantial evidence showing that the pupil committed any of the acts enumerated in Section 48900.

In hearings which include an allegation of committing or attempting to commit a sexual assault as defined in subdivision (n) of Section 48900 or committing a sexual battery as defined in subdivision (n) of Section 48900, evidence of specific instances, of a complaining witness' prior sexual conduct is to be presumed inadmissible and shall not be heard absent a determination by the person conducting the hearing that extraordinary circumstances exist requiring the evidence be heard. Before the person conducting the hearing makes the determination on whether extraordinary circumstances exist requiring that specific instances of a complaining witness' prior sexual conduct be heard, the complaining witness shall be provided notice and an opportunity to present opposition to the introduction of the evidence. In the hearing on the admissibility of the evidence, the complaining witness shall be entitled to be represented by a parent, guardian, legal counsel, or other support person. Reputation or opinion evidence regarding the sexual behavior of the complaining witness is not admissible for any purpose.

(i) (1) Before the hearing has commenced, the governing board may issue subpoenas at the request of either the superintendent of schools or the superintendent's designee or the pupil, for the personal appearance of percipient witnesses at the hearing. After the hearing has commenced, the governing board or the hearing officer or administrative panel may, upon request of either the county superintendent of schools or the superintendent's designee or the pupil, issue subpoenas. All subpoenas shall be issued in accordance with Sections 1985, 1985.1, and 1985.2 of the Code of Civil Procedure. Enforcement of subpoenas shall be done in accordance with Section 11525 of the Government Code.

(2) Any objection raised by the superintendent of schools or the superintendent's designee or the pupil to the issuance of subpoenas may be considered by the governing board in closed session, or in open session, if so requested by the pupil before the meeting. Any decision by the governing board in response to an objection to the issuance of subpoenas shall be final and binding.

(3) If the governing board, hearing officer, or administrative panel determines, in accordance with subdivision (f), that a percipient witness would be subject to an unreasonable risk of harm by testifying at the hearing, a subpoena shall not be issued to compel the personal attendance of that witness at the hearing. However, that

witness may be compelled to testify by means of a sworn declaration as provided for in subdivision (f).

(4) Service of process shall be extended to all parts of the state and shall be served in accordance with Section 1987 of the Code of Civil Procedure. All witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the state or any political subdivision thereof, shall receive fees, and all witnesses appearing pursuant to subpoena, except the parties, shall receive mileage in the same amount and under the same circumstances as prescribed for witnesses in civil actions in a superior court. Fees and mileage shall be paid by the party at whose request the witness is subpoenaed.

(j) Whether an expulsion hearing is conducted by the governing board or before a hearing officer or administrative panel, final action to expel a pupil shall be taken only by the governing board in a public session. Written notice of any decision to expel or to suspend the enforcement of an expulsion order during a period of probation shall be sent by the superintendent of schools or his or her designee to the pupil or the pupil's parent or guardian and shall be accompanied by all of the following:

(1) Notice of the right to appeal the expulsion to the county board of education.

(2) Notice of the education alternative placement to be provided to the pupil during the time of expulsion.

(3) Notice of the obligation of the parent, guardian, or pupil under subdivision (b) of Section 48915.1, upon the pupil's enrollment in a new school district, to inform that district of the pupil's expulsion.

(k) The governing board shall maintain a record of each expulsion, including the cause therefor. Records of expulsions shall be a nonprivileged, disclosable public record.

The expulsion order and the causes therefor shall be recorded in the pupil's mandatory interim record and shall be forwarded to any school in which the pupil subsequently enrolls upon receipt of a request from the admitting school for the pupil's school records.

CHAPTER 490

An act relating to emergency services, and making an appropriation therefor.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. (a) The sum of one hundred forty thousand dollars ($140,000) is hereby appropriated from the General Fund to the Office of Emergency Services for allocation to the California

Specialized Training Institute to implement a pilot program for "distance learning" to offer certification, recertification, or renewal classes, or any combination of those classes, over the Internet as an alternative to traditional onsite courses.

(b) Funds appropriated to the office pursuant to subdivision (a) and any other funds that may be expended by the office to develop and implement the distance learning program shall be recovered by the office on behalf of the state through fees charged for distance learning, upon the implementation of a service charge for this program, over a period of five years.

(c) The purposes of the pilot program shall be the following:

(1) To reduce the cost to individuals taking courses through the California Specialized Training Institute.

(2) To reduce the cost to governmental entities, educational institutions, and businesses whose employees take classes through the institute.

(3) To increase the number of individuals involved in disaster management taking classes through the institute.

(d) The Office of Emergency Services shall develop a mechanism by which the value and success, if any, of the pilot program is quantified. The mechanism shall include specific numerical objectives that must be met or exceeded if the pilot program is to be judged successful, including any costs or savings and any change in enrollment above projected baseline amounts as a result of the pilot program.

(e) Notwithstanding Section 7550.5 of the Government Code, the Office of Emergency Services shall provide by June 30, 2000, a written report to the appropriate policy committees of the Legislature concerning the value and success of the pilot program that includes information on whether or not the pilot program achieved the numerical objectives, and a recommendation as to whether the pilot program should be continued, discontinued, or expanded.

CHAPTER 491

An act to add Section 9082.7 to the Elections Code, relating to ballot pamphlets.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 9082.7 is added to the Elections Code, to read:

9082.7. The Secretary of State shall disseminate the complete state ballot pamphlet over the Internet.

CHAPTER 492

An act to amend Sections 7085 and 7085.5 of the Business and Professions Code, relating to arbitration of contractor disputes.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 7085 of the Business and Professions Code is amended to read:

7085. (a) After investigating any verified complaint alleging a violation of Section 7107, 7109, 7110, 7113, 7119, or 7120, and any complaint arising from a contract involving works of improvement as defined in Section 7151 and finding a possible violation, the registrar may, with the concurrence of both the licensee and the complainant, refer the alleged violation, and any dispute between the licensee and the complainant arising thereunder, to arbitration pursuant to this article, provided the registrar finds that:

(1) There is evidence that the complainant has suffered or is likely to suffer material damages as a result of a violation of Section 7107, 7109, 7110, 7113, 7119, or 7120, and any complaint arising from a contract involving works of improvement as defined in Section 7151.

(2) There are reasonable grounds for the registrar to believe that the public interest would be better served by arbitration than by disciplinary action.

(3) The licensee does not have a history of repeated or similar violations.

(4) The licensee was in good standing at the time of the alleged violation, and is in good standing at the time of referral to arbitration.

(5) The licensee does not have any outstanding disciplinary actions filed against him or her.

(6) The parties have not previously agreed to private arbitration of the dispute pursuant to contract or otherwise.

(7) The parties have been advised of the provisions of Section 2855 of the Civil Code.

For the purposes of paragraph (1), "material damages" means damages greater than five thousand dollars ($5,000) and less than fifty thousand dollars ($50,000).

(b) In all cases in which a possible violation of the sections set forth in paragraph (1) of subdivision (a) exists and the contract price is equal to or less than five thousand dollars ($5,000), or the demand for damages is equal to or less than five thousand dollars ($5,000)

regardless of the contract price, the complaint shall be referred to arbitration, utilizing the criteria set forth in paragraphs (2) to (6), inclusive, of subdivision (a).

SEC. 2. Section 7085.5 of the Business and Professions Code is amended to read:

7085.5. Arbitrations of disputes arising out of cases filed with or by the board shall be conducted in accordance with the following rules:

(a) All "agreements to arbitrate" shall include the names, addresses, and telephone numbers of the parties to the dispute, the issue in dispute, and the amount in dollars or any other remedy sought. The appropriate fee shall be paid by the board from the Contractors' License Fund.

(b) (1) The board or appointed arbitration association shall appoint an arbitrator in the following manner: immediately after the filing of the agreement to arbitrate, the board or appointed arbitration association shall submit simultaneously to each party to the dispute, an identical list of names of persons chosen from the panel. Each party to the dispute shall have seven days from the mailing date in which to cross off any names to which it objects, number the remaining names to indicate the order of preference, and return the list to the board or appointed arbitration association. If a party does not return the list within the time specified, all persons named in the list are acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the board or appointed arbitration association shall appoint an arbitrator to serve. If the parties fail to agree on any of the parties named, if acceptable arbitrators are unable to act, or if, for any other reason, the appointment cannot be made from the submitted lists, the board or appointed arbitration association shall have the power to make the appointment from among other members of the panel without the submission of any additional lists. Each dispute shall be heard and determined by one arbitrator unless the board or appointed arbitration association, in its discretion, directs that a greater number of arbitrators be appointed.

(2) In all cases in which a complaint has been referred to arbitration pursuant to subdivision (b) of Section 7085, the board or the appointed arbitration association shall have the power to appoint an arbitrator to hear the matter.

(3) The board shall adopt regulations setting minimum qualification standards for listed arbitrators based upon relevant training, experience, and performance.

(c) No person shall serve as an arbitrator in any arbitration in which that person has any financial or personal interest in the result of the arbitration. Prior to accepting an appointment, the prospective arbitrator shall disclose any circumstances likely to prevent a prompt hearing or to create a presumption of bias. Upon receipt of that information, the board or appointed arbitration association shall immediately replace the arbitrator or communicate the information

to the parties for their comments. Thereafter, the board or appointed arbitration association shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

(d) The board or appointed arbitration association may appoint another arbitrator if a vacancy occurs, or if an appointed arbitrator is unable to serve in a timely manner.

(e) (1) The board or appointed arbitration association shall provide the parties with a list of the times and dates, and locations of the hearing to be held. The parties shall notify the arbitrator, within seven calendar days of the mailing of the list, of the times and dates convenient to each party. If the parties fail to respond to the arbitrator within the seven-day period, the arbitrator shall fix the time, place, and location of the hearing. An arbitrator may, at the arbitrator's sole discretion, make an inspection of the construction site which is the subject of the arbitration. The arbitrator shall notify the parties of the time and date set for the inspection. Any party who so desires may be present at the inspection.

(2) The board or appointed arbitration association shall fix the time, place, and location of the hearing for all cases referred to arbitration pursuant to subdivision (b) of Section 7085. An arbitrator may, at the arbitrator's sole discretion, make an inspection of the construction site which is the subject of the arbitration. The arbitrator shall notify the parties of the time and date set for the inspection. Any party who desires may be present at the inspection.

(f) Any person having a direct interest in the arbitration is entitled to attend the hearing. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person.

(g) Hearings shall be adjourned by the arbitrator only for good cause.

(h) A record is not required to be taken of the proceedings. However, any party to the proceeding may have a record made at its own expense. The parties may make appropriate notes of the proceedings.

(i) The hearing shall be conducted by the arbitrator in any manner which will permit full and expeditious presentation of the case by both parties. Consistent with the expedited nature of arbitration, the arbitrator shall establish the extent of, and schedule for, the protection of relevant documents and other information, the identification of any witnesses to be called, and a schedule for any hearings to elicit facts solely within the knowledge of one party. The complaining party shall present its claims, proofs, and witnesses, who shall submit to questions or other examination. The defending party shall then present its defenses, proofs, and witnesses, who shall submit to questions or other examination. The arbitrator has

discretion to vary this procedure but shall afford full and equal opportunity to the parties for the presentation of any material or relevant proofs.

(j) The arbitration may proceed in the absence of any party who, after due notice, fails to be present. The arbitrator shall require the attending party to submit supporting evidence in order to make an award. An award for the attending party shall not be based solely on the fact that the other party has failed to appear at the arbitration hearing.

(k) The arbitrator shall be the sole judge of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be required.

(*l*) The arbitrator may receive and consider documentary evidence. Documents to be considered by the arbitrator may be submitted prior to the hearing. However, a copy shall be simultaneously transmitted to all other parties and to the board or appointed arbitration association for transmittal to the arbitrator or board appointed arbitrator.

(m) The arbitrator shall specifically inquire of the parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, the arbitrator shall declare the hearing closed and minutes thereof shall be recorded. If briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of briefs. If documents are to be filed as requested by the arbitrator and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearings. The time limit within which the arbitrator is required to make the award shall commence to run, in the absence of other agreements by the parties, upon the closing of the hearings.

(n) The hearing may be reopened on the arbitrator's own motion. The arbitrator shall have 30 calendar days from the closing of the reopened hearing within which to make an award.

(o) Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with, and who fails to state his or her objections to the arbitrator in writing, within 10 calendar days of close of hearing, shall be deemed to have waived his or her right to object.

(p) (1) Except as provided in paragraph (2), any papers or process necessary or proper for the initiation or continuation of an arbitration under these rules and for any court action in connection therewith, or for the entry of judgment on an award made thereunder, may be served upon any party (A) by regular mail addressed to that party or his or her attorney at the parties' last known addresses, or (B) by personal service.

(2) Notwithstanding paragraph (1), in all cases referred to arbitration pursuant to subdivision (b) of Section 7085 in which the contractor fails or refuses to return an executed copy of the notice to arbitrate within the time specified, any papers or process specified

in paragraph (1) to be sent to the contractor, including the notice of hearing, shall be mailed by certified mail to the contractor's address of record.

(q) The award shall be made promptly by the arbitrator, and unless otherwise agreed by the parties, no later than 30 calendar days from the date of closing the hearing, or if oral hearing has been waived, from the date of transmitting the final statements and proofs to the arbitrator.

The arbitrator may for good cause extend any period of time established by these rules, except the time for making the award. The arbitrator shall notify the parties of any extension and the reason therefor.

(r) The arbitrator may grant any remedy or relief which the arbitrator deems just and equitable and within the scope of the board's referral and the requirements of the board including, but not limited to, specific performance of a contract. The arbitrator, in his or her sole discretion, may award costs or expenses.

(s) The award shall become final 30 calendar days from the date the arbitration award is issued. The arbitrator, upon written application of a party to the arbitration, may correct the award upon the following grounds:

(1) There was an evident miscalculation of figures or an evident mistake in the description of any person, things, or property referred to in the award.

(2) There is any other clerical error in the award, not affecting the merits of the controversy.

An application for correction of the award shall be made within 10 calendar days of the date of service of the award by serving a copy of the application on the arbitrator, and all other parties to the arbitration. Any party to the arbitration may make a written objection to the application for correction by serving a copy of the written objection on the arbitrator, the board, and all other parties to the arbitration, within 10 calendar days of the date of service of the application for correction.

The arbitrator shall either deny the application or correct the award within 30 calendar days of the date of service of the original award by mailing a copy of the denial or correction to all parties to the arbitration. Any appeal from the denial or correction shall be filed with a court of competent jurisdiction and a true copy thereof shall be filed with the arbitrator or appointed arbitration association within 30 calendar days of the issuance of the award, before the award becomes final. The award shall be in writing, and shall be signed by the arbitrator or a majority of them. If no appeal is filed within the 30-calendar day period, it shall become a final order of the registrar.

(t) Service of the award by certified mail shall be effective if a certified letter containing the award, or a true copy thereof, is mailed by the arbitrator or arbitration association to each party or to a party's attorney of record at their last known address, address of record, or

by personally serving any party. Service may be proved in the manner authorized in civil actions.

(u) The expenses of one expert witness appointed by the board, when the services of an expert witness are requested by either party involved in arbitration pursuant to this article, shall be paid by the board. Parties who choose to present the findings of another expert witness as evidence shall pay for those services. Payment for expert witnesses appointed by the board shall be limited to the expert witness costs for inspection of the problem at the construction site, preparation of the expert witness' report, and expert witness fees for appearing or testifying at a hearing. All requests for payment to an expert witness shall be submitted on a form which has been approved by the registrar. All requests for payment to an expert witness shall be reviewed and approved by the board prior to payment. The registrar shall advise the parties that names of industry experts may be obtained by requesting this information from the registrar.

(v) The arbitrator shall interpret and apply these rules insofar as they relate to his or her powers and duties.

(w) The following shall apply as to court procedure and exclusion of liability:

(1) The board, the appointed arbitration association, or any arbitrator in a proceeding under these rules is not a necessary party in judicial proceedings relating to the arbitration.

(2) Parties to these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

(3) The board, the appointed arbitration association, or any arbitrator is not liable to any party for any act or omission in connection with any arbitration conducted under these rules.

SEC. 3. In enacting Section 2 of this act, the Legislature does not intend to preclude the Contractors' State License Board from specifying by administrative regulation any additional arbitrator experience or qualification standards.

CHAPTER 493

An act to amend Section 40000.15 of, and to add Article 17 (commencing with Section 28150) to Chapter 5 of Division 12 of, the Vehicle Code, relating to vehicles.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Article 17 (commencing with Section 28150) is added to Chapter 5 of Division 12 of the Vehicle Code, to read:

Article 17. Jamming Devices

28150. (a) No vehicle shall be equipped with any device that is designed for, or is capable of, jamming, scrambling, neutralizing, disabling, or otherwise interfering with radar, laser, or any other electronic device used by a law enforcement agency to measure the speed of moving objects.

(b) No person shall use, buy, possess, manufacture, sell, or otherwise distribute any device that is designed for jamming, scrambling, neutralizing, disabling, or otherwise interfering with radar, laser, or any other electronic device used by a law enforcement agency to measure the speed of moving objects.

(c) Except as provided in subdivision (d), a violation of subdivision (a) or (b) is an infraction.

(d) When a person possesses four or more devices in violation of subdivision (b), the person is guilty of a misdemeanor.

(e) Notwithstanding any other provision of law, a person who has a valid federal license for operating the devices described in this section may transport one or more of those devices if the license is carried in the vehicle transporting the device at all times when the device is being transported.

SEC. 2. Section 40000.15 of the Vehicle Code is amended to read:

40000.15. A violation of any of the following provisions shall constitute a misdemeanor, and not an infraction:

Sections 23103 and 23104, relating to reckless driving.

Section 23109, relating to speed contests or exhibitions.

Section 23110, subdivision (a), relating to throwing at vehicles.

Section 23152, relating to driving under the influence.

Subdivision (b) of Section 23222, relating to possession of marijuana.

Subdivision (a) or (b) of Section 23224, relating to persons under 21 years of age knowingly driving, or being a passenger in, a motor vehicle carrying any alcoholic beverage.

Sections 23237 and 23244, relating to ignition interlock devices.

Section 23253, relating to officers on vehicular crossings.

Section 23332, relating to trespassing.

Section 24011.3, relating to vehicle bumper strength notices.

Section 27150.1, relating to sale of exhaust systems.

Section 27362, relating to child passenger seat restraints.

Section 28050, relating to true mileage driven.

Section 28050.5, relating to nonfunctional odometers.

Section 28051, relating to resetting odometer.

Section 28051.5, relating to device to reset odometer.

Subdivision (d) of Section 28150, relating to possessing four or more jamming devices.

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 494

An act to amend Section 1739.7 of the Civil Code, relating to collectibles.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 1739.7 of the Civil Code is amended to read:

1739.7. (a) As used in this section:

(1) "Autographed" means bearing the actual signature of a personality signed by that individual's own hand.

(2) "Collectible" means an autographed sports item, including, but not limited to, a photograph, book, ticket, plaque, sports program, trading card, item of sports equipment or clothing, or other sports memorabilia sold or offered for sale in or from this state by a dealer to a consumer for five dollars ($5) or more.

(3) "Consumer" means any natural person who purchases a collectible from a dealer for personal, family, or household purposes. "Consumer" also includes a prospective purchaser meeting these criteria.

(4) "Dealer" means a person who is in the business of selling or offering for sale collectibles in or from this state, exclusively or nonexclusively, or a person who by his or her occupation holds himself or herself out as having knowledge or skill peculiar to collectibles, or to whom that knowledge or skill may be attributed by his or her employment of an agent or other intermediary that by his or her occupation holds himself or herself out as having that knowledge or skill. "Dealer" includes an auctioneer who sells collectibles at a public auction, and also includes persons who are consignors or representatives or agents of auctioneers. "Dealer" includes a person engaged in a mail order, telephone order, or cable television business for the sale of collectibles.

(5) "Description" means any of the following:

(A) Any representation in writing, including, but not limited to, a representation in an advertisement, brochure, catalog, flyer, invoice, sign, or other commercial or promotional material.

(B) Any oral representation.

(C) Any representation included in a radio or television broadcast to the public in or from this state.

(6) "Limited edition" means any collectible that meets all of the following requirements:

(A) A company has produced a specific quantity of a collectible and placed it on the open market.

(B) The producer of the collectible has posted a notice, at its primary place of business, that it will provide any consumer, upon request, with a copy of a notice that states the exact number of a collectible produced in that series of limited editions.

(C) The producer makes available, upon request of a consumer, evidence that the electronic encoding, films, molds, or plates used to create the collectible have been destroyed after the specified number of collectibles have been produced.

(D) The sequence number of the collectible, and the number of the total quantity produced in the limited edition is printed on the collectible.

(7) "Mint condition" means any collectible sold on the open market or through a private transaction that meets all of the following requirements:

(A) The item has never been circulated, used, or worn.

(B) The item exhibits little or no signs of aging or degradation caused by oxidation or exposure to sunlight as a result of its display.

(C) The item is otherwise free from creases, blemishes, or marks.

(8) "Promoter" means a person who arranges, holds, organizes, or presents a trade show featuring collectibles, autograph signings, or both.

(9) "Person" means any natural person, partnership, corporation, limited liability company, company, trust, association, or other entity, however organized.

(b) Whenever a dealer, in selling or offering to sell to a consumer a collectible in or from this state, provides a description of that collectible as being autographed, the dealer shall furnish a certificate of authenticity to the consumer at the time of sale. The certificate of authenticity shall be in writing, shall be signed by the dealer or his or her authorized agent, and shall specify the date of sale. The certificate of authenticity shall be in at least 10-point boldface type and shall contain the dealer's true legal name and street address. The dealer shall retain a copy of the certificate of authenticity for not less than seven years. Each certificate of authenticity shall do all of the following:

(1) Describe the collectible and specify the name of the sports personality who autographed it.

(2) Either specify the purchase price and date of sale or be accompanied by a separate invoice setting forth that information.

(3) Contain an express warranty, which shall be conclusively presumed to be part of the bargain, of the authenticity of the collectible. This warranty shall not be negated or limited by reason of the lack of words such as "warranty" or "guarantee" or because the dealer does not have a specific intent or authorization to make the warranty or because any statement relevant to the collectible is or purports to be, or is capable of being, merely the dealer's opinion.

(4) Specify if the collectible is offered as one of a limited edition and, if so, shall specify (A) how the collectible and edition are numbered and (B) the size of the edition and the size of any prior or anticipated future edition, if known, or if not known, the certificate shall contain an explicit statement to that effect.

(5) Indicate whether the dealer is surety bonded or is otherwise insured to protect the consumer against errors and omissions of the dealer and, if bonded or insured, provide proof thereof.

(6) Indicate the last four digits of the dealer's resale certificate number from the State Board of Equalization.

(7) Indicate whether the item was autographed in the presence of the dealer and specify the date and location of, and the name of a witness to, the autograph signing.

(8) Indicate whether the item was obtained or purchased from a third party. If so, indicate the name and address of this third party.

(9) Include an identifying serial number which corresponds to an identifying number printed on the collectible item, if any. The serial number shall also be printed on the sales receipt. If the sales receipt is printed electronically, the dealer may manually write the serial number on the receipt.

(c) No dealer shall represent an item as a collectible if it was not autographed by the sports personality in his or her own hand.

(d) No dealer shall display or offer for sale a collectible in this state, unless at the location where the collectible is offered for sale, and in close proximity to the collectible merchandise, there is a conspicuous sign that reads as follows:

"SALE OF AUTOGRAPHED SPORTS MEMORABILIA: AS REQUIRED BY LAW, A DEALER WHO SELLS TO A CONSUMER ANY SPORTS MEMORABILIA DESCRIBED AS BEING AUTOGRAPHED MUST PROVIDE A WRITTEN CERTIFICATE OF AUTHENTICITY AT THE TIME OF SALE. THIS DEALER MAY BE SURETY BONDED OR OTHERWISE INSURED TO ENSURE THE AUTHENTICITY OF ANY COLLECTIBLE SOLD BY THIS DEALER."

(e) Any dealer engaged in a mail-order or telephone-order business for the sale of collectibles in or from this state:

(1) Shall include the disclosure specified in paragraph (d), in type of conspicuous size, in any written advertisement relating to a collectible.

(2) Shall include in each television advertisement relating to a collectible the following written on-screen message, which shall be prominently displayed, shall be easily readable, and shall be clearly visible for no less than five seconds and shall be repeated for five seconds once during each four-minute segment of the advertisement following the initial four minutes:

"A written certificate of authenticity is provided with each autographed collectible, as required by law. This dealer may be surety bonded or otherwise insured to ensure the authenticity of any collectible sold by this dealer."

(3) Shall include as part of the oral message of each radio advertisement for a collectible the disclosure specified in subdivision (d).

(f) No dealer shall display or offer for sale a collectible in this state at any trade show or similar event primarily featuring sales of collectibles or other sports memorabilia which offers onsite admission ticket sales, unless at each onsite location where admission tickets are sold, there is prominently displayed a specimen example of a certificate of authenticity.

(g) Any consumer injured by the failure of a dealer to provide a certificate of authenticity containing the information required by this section, or by a dealer's furnishing of a certificate of authenticity that is false, shall be entitled to recover, in addition to actual damages, a civil penalty in an amount equal to 10 times actual damages, plus court costs, reasonable attorney's fees, interest, and expert witness fees, if applicable, incurred by the consumer in the action. The court in its discretion, may award additional damages based on the egregiousness of the dealer's conduct. The remedy specified in this section is in addition to, and not in lieu of, any other remedy that may be provided by law.

(h) No person shall represent himself or herself as a dealer in this state unless he or she possesses a valid resale certificate number from the State Board of Equalization.

(i) A dealer may be surety bonded or otherwise insured for purposes of indemnification against errors and omissions arising from the authentication, sale, or resale of collectibles.

(j) Whenever a promoter arranges or organizes a trade show featuring collectibles and autograph signings, the promoter shall notify, in writing, any dealer who has agreed to purchase or rent space in this trade show what the promoter will do if any laws of this state are violated, including the fact that law enforcement officials will be contacted when those laws are violated. This notice shall be delivered to the dealer, at his or her registered place of business, at

the time the agreement to purchase space in the trade show is made. The following language shall be included in each notice:

"As a vendor at this collectibles trade show, you are a professional representative of this hobby. As a result, you will be required to follow the laws of this state, including laws regarding the sale and display of collectibles, as defined in Section 1739.7 of the Civil Code, forged and counterfeit collectibles and autographs, and mint and limited edition collectibles. If you do not obey the laws, you may be evicted from this trade show, be reported to law enforcement, and be held liable for a civil penalty of 10 times the amount of damages."

CHAPTER 495

An act to amend Section 1153 of the Insurance Code, relating to insurance.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 1153 of the Insurance Code is amended to read:

1153. An insurer shall not be admitted within three years from and after the time when it commences business as an insurer, nor within three years from and after the time when it is first incorporated, unless assets equal to the sum of its liabilities and the minimum capital and surplus required for admission are maintained in cash or one or more of the following:

(a) Securities specified in Sections 1170 to 1175, inclusive.

(b) Premiums that are in the course of collection, or agents' balances representing premiums, on policies effected not more than 90 days prior to the date on which these premiums or balances are valued for the purpose of this section, and earned service fees receivable, not over 90 days due, and evidences of debt representing those assets.

(c) In the case of a life insurer, the amount of current deferred premiums receivable, after deducting therefrom the amount of the loading.

(d) Interest accrued and dividends declared, receivable on any of the assets specified in subdivisions (a) to (c), inclusive, no part of which interest or dividends has been due in excess of one year.

(e) Amount of reinsurance recoverable from admitted insurers.

(f) With the prior approval of the commissioner, any investments authorized by this code if the following conditions are met:

(1) The insurer has previously been authorized to write life or health insurance, or is seeking authority to write life or health insurance.

(2) The solvency of the insurer is guaranteed by another insurer (the "guaranteeing insurer") that meets the following criteria:

(A) The guaranteeing insurer has an ownership interest of at least 50 percent in the insurer.

(B) The guaranteeing insurer, which may be a reciprocal or interinsurance exchange, has been admitted to do business in this state for not less than 10 years.

(C) The guaranteeing insurer has maintained a surplus of admitted assets over all liabilities of at least five hundred million dollars ($500,000,000) for not less than three years.

(3) The commissioner, in his or her discretion, determines that the proposed investment is sound in relation to the insurer's business plan and operations.

CHAPTER 496

An act to amend Section 1755.3 of, and to add Section 223 to, the Welfare and Institutions Code, relating to youthful offenders.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 1755.3 of the Welfare and Institutions Code is amended to read:

1755.3. Whenever any person under the jurisdiction of the Youth Authority, or any minor under the jurisdiction of the Department of Corrections, is in need of medical, surgical, or dental care, the Youth Authority or the Department of Corrections, as applicable, may authorize, upon the recommendation of the attending physician or dentist, as applicable, the performance of that necessary medical, surgical, or dental service.

SEC. 2. Section 223 is added to the Welfare and Institutions Code, to read:

223. (a) (1) The parents or guardians of any minor in the custody of the state or the county, if they can reasonably be located, shall be notified within 24 hours by the public officer responsible for the well-being of that minor, of any serious injury or serious offense committed against the minor, upon reasonable substantiation that a serious injury or offense has occurred.

(2) This section shall not apply if the minor requests that his or her parents or guardians not be informed and the chief probation officer or the Director of the Youth Authority, as appropriate, determines

it would be in the best interest of the minor not to inform the parents or guardians.

(b) For purposes of this section, "serious offense" means any offense that is chargeable as a felony and that involves violence against another person. "Serious injury" means, for purposes of this section, any illness or injury that requires hospitalization, is potentially life threatening, or that potentially will permanently impair the use of a major body organ, appendage, or limb.

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 497

An act to amend Section 53356.2 of the Government Code, to amend Sections 2196, 2511.1, 3372, 3691.1, 3691.2, 3691.4, 3691.5, 3692, 3694, 3700, 3701, 3708, 3731, 3793.1, 4106, 4112, 4807, and 4992 of, to add Sections 3691.6 and 3700.5 to, and to repeal Sections 3446, 3447, 3448, 3715, 4803, and 4839 of, the Revenue and Taxation Code, and to amend Section 8833 of the Streets and Highways Code, relating to taxation.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

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

SECTION 1. Section 53356.2 of the Government Code is amended to read:

53356.2. (a) When any foreclosure actions are ordered by the local agency or legislative body, or when subsequent installments and interest that are also to be made the subject of a foreclosure action thereafter become delinquent, and the foreclosure action is not commenced and a notice of pendency of action is not concurrently recorded, prior to the actual removal of the delinquent installment from the tax roll, the local agency or legislative body responsible for the foreclosure action on the delinquent installment shall do one of the following:

(1) Prior to the actual removal of the delinquent installment from the tax roll, the local agency or legislative body shall record or cause to have recorded in the county recorder's office in the county in which the real property is located, a Notice of Intent to Remove Delinquent Special Tax Installment from the Tax Roll, which contains the information set forth in subdivision (b). If action is taken under this paragraph, all of the following apply:

(A) Upon presentation of written proof of the recordation and a request for removal by the local agency or legislative body, the county auditor shall remove the delinquent installments from the tax roll. "Proof of recordation" includes, but is not limited to, a certified copy of the notice set forth in subdivision (b), or a copy of the recorded notice containing the county recorder's assigned document number, or a copy of the recorded notice containing a copy stamp from the office of the county recorder.

(B) From the date of the recordation, the county tax collector shall be credited upon the current tax roll with the amount charged against him or her on account of the delinquent special tax installment. If any person pays the delinquent installment referred to in the Notice of Intent to Remove Delinquent Special Tax Installment from the Tax Roll to the county tax collector prior to or subsequent to the actual removal of that delinquent installment from the tax roll, the county auditor shall forward that payment to the local agency or legislative body responsible for the foreclosure action.

(C) From the date of recordation pursuant to this section, the special tax installment, and interest thereon, and penalties, costs, fees, and other charges accrued under applicable statutes, that are to be collected in a foreclosure action, shall no longer be collectible by the county tax collector.

(D) The county tax collector, in addition to the costs recovered in foreclosure, may charge the actual costs incurred in removing these sums from the tax roll or the performance of any other related duties as set forth in this section.

(E) Installments, interest, penalties, costs, fees, and other charges that do not become the subject of a foreclosure action shall remain collectible by the county tax collector as otherwise provided by applicable law.

(2) As an alternative to the notice requirement set forth in paragraph (1), the Counties of San Bernardino and Riverside may, simultaneously with the removal of the delinquent special tax installment from the secured tax roll, provide notification on the secured tax roll that the installment has been removed from the roll for each parcel for which the delinquent special tax installment was removed. The notice shall be displayed in a manner which conveys that the removal has occurred, and shall include the name and telephone number of the person or entity to be contacted to receive further information.

(b) The Notice of Intent to Remove Delinquent Special Tax Installment from the Tax Roll shall be completed and recorded by or caused to be recorded by the local agency or legislative body responsible for the foreclosure action, and shall contain all of the following:

(1) The name of the local agency or legislative body, city, or other assessment district responsible for the foreclosure action.

(2) The legal description or assessor's parcel number of the property affected by the notice.

(3) The specific tax year and installment intended to be removed from the tax roll.

(4) The title, address, and telephone number of the employee, city official, or other authorized official who should be contacted regarding the delinquent assessment installment amount.

(5) The name of the owner shown on the last equalized assessment roll.

(c) Any local agency or legislative body that removed or caused to be removed a delinquent special tax installment from the ad valorem tax roll prior to January 1, 1997, shall record, by July 1, 1997, a Notice of Intent to Remove Delinquent Special Tax Installment from the Tax Roll or shall request the tax collector to retain the notice of delinquent special tax installment on the tax roll as set forth in paragraph (2) of subdivision (a). If the foreclosure action has been filed and a notice of pendency of action has been recorded in the county recorder's office prior to July 1, 1997, this requirement does not apply.

(d) All costs associated with the county tax collector's and local agency's or legislative body's responsibilities as set forth in this section shall be recoverable by the local agency or legislative body through the foreclosure action.

(e) The recording of a notice of pendency of action in the county recorder's office in the county in which the real property is located, concurrent with the commencement of a foreclosure action ordered by the local agency or legislative body and commenced prior to the actual removal from the tax roll of the delinquent installment which is the subject of the foreclosure action, constitutes compliance with the notice requirements of this section.

SEC. 2. Section 2196 of the Revenue and Taxation Code is amended to read:

2196. (a) If the tax collector determines, following the presentation of evidence by the owner or assessee of real property, that a lien on that property for unpaid taxes, assessments, fees, or charges levied by a local public entity has been erroneously filed for recordation, the tax collector shall send a document to the recorder stating the facts that indicate the erroneous filing. The document shall be clearly labeled with the words "Removal of Invalid Lien," and shall be signed by either the tax collector or his or her deputy.

(b) The recorder shall mail the original "Removal of Invalid Lien" document to the owner of the property after recording the document.

(c) For purposes of this section, "local public entity" means a county, a city, or a district.

SEC. 3. Section 2511.1 of the Revenue and Taxation Code is amended to read:

2511.1. (a) As used in this section:

(1) "Credit card" means any card, plate, coupon book, or other credit device existing for the purpose of being used from time to time upon presentation to obtain money, property, labor, or services on credit.

(2) "Card issuer" means any person who issues a credit card and purchases credit card drafts, or the agent for those purposes with respect to a credit card.

(3) "Cardholder" means any person to whom a credit card is issued or any person who has agreed with the card issuer to pay obligations arising from the issuance of a credit card to another person.

(4) "Draft purchaser" means any person who purchases credit card drafts.

(b) The board of supervisors may authorize the acceptance of a credit card for payment of property taxes. Following an authorization pursuant to the preceding sentence, the county shall, upon approval of the board of supervisors, execute a contract with one or more credit card issuers or draft purchasers. The contract shall provide for all of the following:

(1) The respective rights and duties of the county, and card issuers and draft purchasers regarding the presentment, acceptability, and payment of credit card drafts.

(2) The establishment of a reasonable means by which to facilitate payment settlements.

(3) The payment to the card issuer or draft purchaser of a reasonable fee or discount.

(4) Other matters appropriately included in contracts with respect to the purchase of credit card drafts as may be agreed upon by the parties to the contract.

(c) The honoring of a credit card pursuant to subdivision (b) shall constitute payment of the tax as of the date the credit card is honored, provided the credit card draft is paid following its due presentment to a card issuer or draft purchaser.

(d) The county may impose a fee for the use of a credit card sufficient in amount to provide for the recovery of fees or discounts paid by the county under paragraph (3) of subdivision (b) and all other costs incurred by the county in providing for payment by credit. Fees imposed under this subdivision shall be approved by the board of supervisors.

(e) If any credit card draft is not paid following due presentment to a card issuer or draft purchaser or is charged back to the county for any reason, any record of payment made shall be null and void. Any receipt issued in acknowledgment of payment shall also be null and void. The obligation of the cardholder shall continue as an outstanding obligation as though no payment had been attempted.

(f) Upon notice of nonpayment of the credit card draft, the tax collector may charge the person who attempted the payment a fee not to exceed the costs of processing the draft, providing notice of nonpayment to that person, and making required cancellations on the tax roll. The amount of the fee shall be set by the board of supervisors pursuant to Section 54986 of the Government Code, and may be added to the tax bill and collected in the same manner as costs recovered pursuant to Section 2621. Fees imposed under this subdivision shall be approved by the board of supervisors.

SEC. 4. Section 3372 of the Revenue and Taxation Code is amended to read:

3372. The notice shall show:

(a) The affidavit of tax default.

(b) The fact that the real property may be redeemed by the payment of the amount of defaulted taxes together with those additional penalties and fees as prescribed by law, or that the real property may be redeemed under an installment plan of redemption.

(c) The official who will furnish all information concerning redemption.

(d) The following information relating to each assessment of tax-defaulted property:

(1) The name of the assessee, and where there is more than one valuation the name of the assessee need be listed only once. For the purposes of this section, the name of the assessee may be the name of the assessee as shown on the current roll.

(2) The description of the property.

(3) The total amount which was originally declared in default.

This information required to be published is the "published delinquent list." If any tax-defaulted property is redeemed, the information relating to the property may be omitted from any publication.

SEC. 5. Section 3446 of the Revenue and Taxation Code is repealed.

SEC. 6. Section 3447 of the Revenue and Taxation Code is repealed.

SEC. 7. Section 3448 of the Revenue and Taxation Code is repealed.

SEC. 8. Section 3691.1 of the Revenue and Taxation Code is amended to read:

3691.1. The tax collector shall execute a notice whenever a parcel becomes subject to the power of sale set forth in Section 3691 on a

form prescribed by the Controller. The county clerk shall take acknowledgment of the notice without charge.

SEC. 9. Section 3691.2 of the Revenue and Taxation Code is amended to read:

3691.2. The notice shall specify:

(a) That five years or more have elapsed since the taxes or assessments on the parcel were declared in default.

(b) That the property was duly assessed for taxation and the tax legally levied.

(c) That the property is subject to sale for nonpayment of taxes.

(d) The amount of taxes originally declared to be in default, unless there has been a partial cancellation of taxes, a redemption from a portion thereof, or a correction under Sections 4831.5 and 4876.5, in any of which events, the amount shall be the balance remaining.

(e) A metes and bounds or lot-block-tract description of the property.

SEC. 10. Section 3691.4 of the Revenue and Taxation Code is amended to read:

3691.4. The notice shall be recorded with the county recorder. After recordation, the notice shall be forwarded to the tax collector. The recorder shall make no charge for the recording.

SEC. 11. Section 3691.5 of the Revenue and Taxation Code is amended to read:

3691.5. The tax collector shall file the notice in his or her office and keep a record to show the subsequent disposition of the property.

SEC. 12. Section 3691.6 is added to the Revenue and Taxation Code, to read:

3691.6. Upon request of the Controller, the tax collector shall report the disposition of all tax-defaulted parcels subject to tax collections power to sale in his or her county.

SEC. 13. Section 3692 of the Revenue and Taxation Code is amended to read:

3692. (a) The tax collector shall attempt to sell tax-defaulted property as provided in this chapter within four years of the time that the property becomes subject to sale for nonpayment of taxes unless by other provisions of law the property is not subject to sale. If there are no acceptable bids at the attempted sale, the tax collector shall attempt to sell the property at intervals of no more than six years until the property is sold.

(b) When oil, gas, or mineral rights are subject to sale for nonpayment of taxes, the tax collector may offer the interest at minimum bid to the holders of outstanding interests where the interest subject to sale is a partial interest or, where the interest subject to sale is a complete and undivided interest, to the owner or owners of the property to which the oil, gas, or mineral rights are appurtenant.

(c) When parcels that are rendered unusable by their size, location, or other conditions are subject to sale for nonpayment of

taxes, the tax collector may offer the parcel at a minimum bid to owners of contiguous parcels. The tax collector shall require that the successful bidder request the assessor and the planning director to combine the unusable parcel with his or her own parcel as a condition of sale.

(d) Sealed bid sale procedures shall be used when offers are made pursuant to subdivision (b) or (c), and the property shall be sold to the highest eligible bidder. The offers shall remain in effect for 30 days or until notice is given pursuant to Section 3702, whichever is later.

(e) The original notice shall indicate that any parcel remaining unsold may be resold within a 90-day period and any new parties of interest shall be notified in accordance with Section 3701. This subdivision shall not apply to properties sold pursuant to Chapter 8 (commencing with Section 3771).

SEC. 14. Section 3694 of the Revenue and Taxation Code is amended to read:

3694. A sale under this chapter shall take place only if approved by the board of supervisors.

SEC. 15. Section 3700 of the Revenue and Taxation Code is amended to read:

3700. Upon providing notice to the board of supervisors as required by Section 3698, the tax collector shall forward one copy to the clerk or secretary of the governing board of each taxing agency, other than the county, having the right to levy taxes or assessments on the property. The copy or copies shall be mailed or delivered at least 30 days before the first publication or posting of the notice of intended sale. However, where the tax collector has on file a consent from each taxing agency, the tax collector may proceed to publish or post the notice of sale.

SEC. 16. Section 3700.5 is added to the Revenue and Taxation Code, to read:

3700.5. Not less than 45 days nor more than 120 days before the proposed sale, the tax collector shall send notice of the proposed sale to the Controller. The notice shall state the date, time, and place of the proposed sale. The tax collector shall notify the Controller of any postponement of the tax sale and the date, time, and place of the sale.

SEC. 17. Section 3701 of the Revenue and Taxation Code is amended to read:

3701. Not less than 45 days nor more than 120 days before the proposed sale, the tax collector shall send notice of the proposed sale by certified mail with return receipt requested to the last known mailing address, if available, of parties of interest, as defined in Section 4675. The notice shall state the date, time, and place of the proposed sale, the amount required to redeem the property, and the fact that the property may be redeemed up to the close of business on the last business day prior to the date of sale, and information regarding the rights of parties of interest to claim excess proceeds, as

defined in Section 4674, if the property is sold and excess proceeds result from that sale.

The tax collector shall make a reasonable effort to obtain the name and last known mailing address of parties of interest.

The validity of any sale under this chapter shall not be affected if the tax collector's reasonable effort fails to disclose the name and last known mailing address of parties of interest or if a party of interest does not receive the mailed notice.

SEC. 18. Section 3708 of the Revenue and Taxation Code is amended to read:

3708. On receiving the full purchase price at any sale under this chapter, the tax collector shall, without charge, execute a deed to the purchaser.

SEC. 19. Section 3715 of the Revenue and Taxation Code is repealed.

SEC. 20. Section 3731 of the Revenue and Taxation Code is amended to read:

3731. (a) When a tax deed to a purchaser of property sold by the tax collector pursuant to this part is recorded and it is determined that the property should not have been sold, the sale may be rescinded by the board of supervisors with the written consent of the county legal adviser and the purchaser of the property under any of the following circumstances:

(1) The property has not been transferred or conveyed by the purchaser at the tax sale to a bona fide purchaser for value.

(2) The property has not become subject to a bona fide encumbrance for value subsequent to the recordation of the tax deed.

(b) When the sale of tax-defaulted property is rescinded pursuant to subdivision (a), the purchaser is entitled to a refund of the amount paid as the purchase price after the purchaser executes a recision of the tax deed. The recision shall also be executed by the county tax collector. The signatures of the purchaser and the county tax collector shall be acknowledged by the county clerk, without charge, and the county tax collector shall then record the recision with the county recorder, without charge. When the recision is recorded, the tax deed becomes null and void as though never issued and all provisions of law relating to tax-defaulted property shall apply to the property.

(c) The holder of a tax certificate who received all or any part of the amount paid by the purchaser shall not be obligated to make any refund or repayment of any amount to the purchaser, the delinquent taxpayer, the county, or any other person. The tax collector may use amounts on deposit in the Tax Certificate Redemption Fund to make the refund, but only to the extent those amounts were paid to the holder of the applicable tax certificate.

SEC. 21. Section 3793.1 of the Revenue and Taxation Code is amended to read:

3793.1. (a) The sales price of any property sold under this article shall include, at a minimum, the amounts of all of the following:

(1) All defaulted taxes and assessments, and all associated penalties and costs.

(2) Redemption penalties and fees incurred through the month of the sale.

(3) All costs of the sale.

(b) If the property or property interests have been offered for sale at least once and no acceptable bids therefor have been received, the tax collector may, in his or her discretion and with the approval of the board of supervisors, offer that property or those interests at the next scheduled sale at a minimum price that the tax collector deems appropriate.

SEC. 22. Section 4106 of the Revenue and Taxation Code is amended to read:

4106. The certificates, with the money, shall be delivered to the tax collector and he or she shall receipt each certificate.

One certificate shall be given to the person making payment and one shall remain in the tax collector's office.

Upon request of the assessor or the auditor, an additional certificate shall be made.

SEC. 23. Section 4112 of the Revenue and Taxation Code is amended to read:

4112. (a) When tax-defaulted property subject to the notice recorded under Section 3691.4 is redeemed, the tax collector shall collect all of the following, in addition to the amount required to redeem:

(1) A fee of thirty-five dollars ($35) that shall be distributed to the county general fund to reimburse the county for its cost of obtaining the names and last known mailing addresses of, and for mailing notices required by Section 3701 to, parties of interest as defined by Section 4675.

(2) A fee in the amount required by Section 27361.3 of the Government Code that shall be distributed to the county recorder for the cost of recordation of a rescission of the notice, as required by subdivision (c).

(3) A fee of one hundred fifty dollars ($150) if redemption is within 90 days of the proposed date for the tax sale of the redeemed property. In the case of unsold tax sale properties remaining on the abstract after the tax sale, the fee shall become a part of the redemption amount and collectible whenever the property is redeemed. The fee shall be distributed to the county general fund to reimburse the county for costs incurred by the county in preparing to conduct that sale.

(b) Notwithstanding subdivision (a), if the tax-defaulted property is redeemed prior to the proposed sale, but after the county has incurred notice or publication costs pursuant to Section 3702 in connection with a notice of intended sale, a fee in an amount

reasonably necessary to reimburse the tax collector for those costs may be collected.

(c) When tax-defaulted property subject to the notice recorded under Section 3691.4 is redeemed, the notice becomes null and void and the tax collector shall execute and record with the county recorder a rescission of the notice in the form prescribed by the Controller. The rescission shall be acknowledged by the county clerk, without charge.

(d) Any fee imposed under paragraph (1) of subdivision (a) or subdivision (b) shall be subject to the requirements of Section 54986 of the Government Code.

SEC. 24. Section 4803 of the Revenue and Taxation Code is repealed.

SEC. 25. Section 4807 of the Revenue and Taxation Code is amended to read:

4807. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against any county, municipality, or district, or any officer thereof, to prevent or enjoin the collection of property taxes sought to be collected. In the case of a collection of taxes pursuant to a bankruptcy proceeding, the county may request a reasonable amount of attorney's fees.

SEC. 26. Section 4839 of the Revenue and Taxation Code is repealed.

SEC. 27. Section 4992 of the Revenue and Taxation Code is amended to read:

4992. If the tax collector declares property subject to a power of sale pursuant to Section 3691 and, either (a) the declaration that the property is tax defaulted is canceled under Section 4991, or (b) the power to sell is void because of any error occurring subsequent to the declaration, then the tax collector, with the approval of the auditor, shall cancel the power to sell in the form prescribed by the Controller. The cancellation shall be acknowledged, without charge, and shall be recorded with the county recorder, without charge.

The fact and date of the cancellation shall be entered on the abstract or electronic data processing records.

SEC. 28. Section 8833 of the Streets and Highways Code is amended to read:

8833. (a) When any foreclosure actions are ordered by the local agency or legislative body, or when subsequent installments and interest that are also to be made the subject of a foreclosure action thereafter become delinquent, and the foreclosure action is not commenced and a notice of pendency of action is not concurrently recorded, prior to the actual removal of the delinquent installment from the tax roll, the local agency or legislative body responsible for the foreclosure action on the delinquent installment shall do one of the following:

(1) Prior to the actual removal of the delinquent installment from the tax roll, the local agency or legislative body shall record or cause to have recorded in the county recorder's office in the county in which the real property is located, a Notice of Intent to Remove Delinquent Assessment Installment from the Tax Roll, which contains the information set forth in subdivision (b). If action is taken under this paragraph, all of the following apply:

(A) Upon presentation of written proof of the recordation and a request for removal by the local agency or legislative body, the county auditor shall remove the delinquent installments from the tax roll. "Proof of recordation" includes, but is not limited to, a certified copy of the notice set forth in subdivision (b), or a copy of the recorded notice containing the county recorder's assigned document number, or a copy of the recorded notice containing a copy stamp from the office of the county recorder.

(B) From the date of the recordation, the county tax collector shall be credited upon the current assessment roll with the amount charged against him or her on account of the delinquent assessments or reassessments. If any person pays the delinquent installment referred to in the Notice of Intent to Remove Delinquent Assessment Installment from the Tax Roll to the county auditor prior to or subsequent to the actual removal of that delinquent installment from the tax roll, the county tax collector shall forward that payment to the local agency or legislative body responsible for the foreclosure action.

(C) From the date of recordation pursuant to this section, the assessment or reassessment or installment thereof or interest thereon, and penalties, costs, fees, and other charges accrued under applicable statutes, that are to be collected in a foreclosure action, shall no longer be collectible by the county tax collector.

(D) The county tax collector, in addition to the costs recovered in foreclosure, may charge the actual costs incurred in removing these sums from the tax roll or the performance of any other related duties as set forth in this section.

(E) Installments, interest, penalties, costs, fees, and other charges that do not become the subject of a foreclosure action shall remain collectible by the county tax collector as otherwise provided by applicable law.

(2) As an alternative to the notice requirement set forth in paragraph (1), the Counties of San Bernardino and Riverside may, simultaneously with the removal of the delinquent special assessment installment from the secured tax roll, provide notification on the secured tax roll that the installment has been removed from the roll for each parcel for which the delinquent special tax assessment was removed. The notice shall be displayed in a manner which conveys that the removal has occurred, and shall include the name and telephone number of the person or entity to be contacted to receive further information.

(b) The Notice of Intent to Remove Delinquent Assessment Installment from the Tax Roll shall be completed and recorded by or caused to be recorded by the local agency or legislative body responsible for the foreclosure action, and shall contain all of the following:

(1) The name of the local agency or legislative body, city, or other assessment district responsible for the foreclosure action.

(2) The legal description or assessor's parcel number of the property affected by the notice.

(3) The specific tax year and installment intended to be removed from the tax roll.

(4) The title, address, and telephone number of the employee, city official, or other authorized official who should be contacted regarding the delinquent assessment installment amount.

(5) The name of the owner shown on the last equalized assessment roll.

(c) Any local agency or legislative body that removed or caused to removed a delinquent assessment installment from the ad valorem tax roll prior to January 1, 1997, shall record, by July 1, 1997, a Notice of Intent to Remove Delinquent Assessment Installment from the Tax Roll or shall request the tax collector to retain the notice of delinquent assessment installment on the tax roll as set forth in paragraph (2) of subdivision (a). If the foreclosure action has been filed and a notice of pendency of action has been recorded in the county recorder's office prior to July 1, 1997, this requirement does not apply.

(d) All costs associated with the county tax collector's and local agency's responsibilities as set forth in this section shall be recoverable by the local agency or legislative body through the foreclosure action.

(e) The recording of a notice of pendency of action in the county recorder's office in the county in which the real property is located, concurrent with the commencement of a foreclosure action ordered by the local agency or legislative body and commenced prior to the actual removal from the tax roll of the delinquent installment which is the subject of the foreclosure action, constitutes compliance with the notice requirements of this section.

SEC. 29. 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 498

An act to add and repeal Section 1203.1abc of the Penal Code, relating to criminal offenders.

[Approved by Governor September 15, 1998. Filed with Secretary of State September 15, 1998.]

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

SECTION 1. Section 1203.1abc is added to the Penal Code, to read:

1203.1abc. (a) In addition to any other terms of imprisonment, fine, and conditions of probation, the court may require any adult convicted of an offense which is not a violent felony, as defined in subdivision (c) of Section 667.5, or a serious felony, as defined in subdivision (c) of Section 1192.7, to participate in a program that is designed to assist the person in obtaining the equivalent of a 12th grade education. In the case of a probationer, the court may require participation in either a literacy program or a General Education Development (GED) program.

(b) A probation officer may utilize volunteers from the community to provide assistance to probationers under this section.

(c) This section shall be operable in Los Angeles County as a pilot project upon approval by a majority vote of the county's board of supervisors to be conducted in two courts within the County of Los Angeles. It shall be operable in other counties only upon approval by a majority vote of a county's board of supervisors.

(d) A county probation department may utilize the volunteer services of a local college or university in evaluating the effectiveness of this program. In the County of Los Angeles, the California State University at Los Angeles (CSULA) shall evaluate the program and submit a report to the Legislature regarding the success or failure of the program. CSULA shall bear the costs of the evaluation and report.

(e) This section shall not apply to any person who is mentally or developmentally incapable of attaining the equivalent of a 12th grade education.

(f) Failure to make progress in a program under subdivision (a) is not a basis for revocation of probation.

(g) This pilot program shall be deemed successful if at least 10 percent of the persons participating in the pilot projects obtain the equivalent of a 12th grade education within three years.

(h) It is the intent of the Legislature that any increases in adult enrollment resulting from the implementation of subdivision (a)

shall not be included in the apportionment of funds for adult education pursuant to Sections 52616.17 to 52616.20, inclusive, of the Education Code.

(i) This section is repealed effective January 1, 2004, unless it is extended or made permanent by subsequent legislation.

CHAPTER 499

An act to add Article 18.8 (commencing with Section 749.3) to Part 1 of Division 2 of, and to add Chapter 2.5 (commencing with Section 990) to Part 1 of Division 2 of, the Welfare and Institutions Code, relating to juvenile correctional facilities and youth centers, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 15, 1998. Filed with Secretary of State September 15, 1998.]

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

SECTION 1. Article 18.8 (commencing with Section 749.3) is added to Part 1 of Division 2 of the Welfare and Institutions Code, to read:

Article 18.8. County Juvenile Correctional Facilities Act

749.3. This title shall be known and may be cited as the County Juvenile Correctional Facilities Act.

749.31. The Legislature finds and declares all of the following:

(a) While the County Correctional Capital Expenditure Bond Act of 1986 and the County Correctional Facility Capital Expenditure and Youth Facility Bond Act of 1988 have provided ninety million dollars ($90,000,000) for county juvenile facilities for remodeling to help ensure health and safety requirements, many problems remain.

(b) Numerous county juvenile facilities throughout California are dilapidated and overcrowded and do not meet standards. Over 40 percent or 4,335 facility beds are in need of renovation, reconstruction, construction, and deferred maintenance.

(c) Capital improvements are necessary to protect the life and safety of the persons confined or employed in juvenile facilities and to upgrade the health and sanitary conditions of those facilities.

(d) Over two hundred twenty million dollars ($220,000,000) is needed to remodel, upgrade, or replace 4,335 beds by the year 2000.

(e) Due to fiscal constraints associated with the loss of local property tax revenues, counties are unable to finance the construction of adequate juvenile facilities.

(f) Local juvenile facilities are operating over capacity or must implement emergency release procedures, and the population of these facilities is still increasing. It is essential to the public safety that construction proceed as expeditiously as possible to relieve overcrowding and to maintain public safety and security.

(g) County juvenile facilities are threatened with closure or the imposition of court ordered sanctions if health and safety deficiencies are not corrected immediately.

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

(a) "County juvenile facilities" means county juvenile halls or camps.

(b) "Board" means the Board of Corrections.

749.33. (a) Upon appropriation by the Legislature, moneys may be available to the board for the purpose of awarding grants on a competitive basis to counties for the renovation, reconstruction, construction, completion of construction, and replacement of county juvenile facilities, and the performance of deferred maintenance on county juvenile facilities. However, deferred maintenance for facilities shall only include items with a useful life of at least 10 years. Up to $1^1/_2$ percent of these moneys may be used by the board for administration of this article.

(b) No grant shall be awarded pursuant to this article unless the applicant makes available resources in an amount equal to at least 25 percent of the amount of the grant. Resources may include in-kind contributions from participating agencies, but in no event shall the applicant's cash contribution be less than 10 percent of the grant.

(c) An application for funds shall be in the manner and form prescribed by the board and pursuant to recommendations of an allocation advisory committee appointed by the board. From these recommendations, an allocation plan shall be developed and adopted by the board. The allocation advisory committee shall convene upon notification by the board.

(d) Any application for funds shall include, but not be limited to, all of the following:

(1) Documentation of need for the project or projects.

(2) Adoption of a formal county plan to finance construction of the proposed project or projects.

(3) Submittal of a preliminary staffing plan for the project or projects.

(4) Submittal of architectural drawings, which shall be approved by the board for compliance with minimum juvenile detention facility standards and which shall also be approved by the State Fire Marshal for compliance with fire and life safety requirements.

(5) Documentation that the facilities will be safely staffed and operated in compliance with law, including applicable regulations of the board.

(e) The board shall not be deemed a responsible agency, as defined in Section 21069 of the Public Resources Code, or otherwise be subject to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) for any activities undertaken or funded pursuant to this title. This subdivision does not exempt any local agency from the requirements of the California Environmental Quality Act.

SEC. 2. Chapter 2.5 (commencing with Section 990) is added to Part 1 of Division 2 of the Welfare and Institutions Code, to read:

CHAPTER 2.5. JUVENILE AND GANG VIOLENCE PREVENTION, DETENTION, AND PUBLIC PROTECTION ACT OF 1998

990. As used in this article:

(a) "Acquiring" means obtaining ownership of an existing facility in fee simple for use as a youth center.

(b) "Altering" or "renovating" means making modifications to an existing facility that are necessary for cost-effective use as a youth center, including restoration, repair, expansion, and all related physical improvements.

(c) "Applicant" means a nonprofit youth serving agency, including, but not limited to, organizations such as Boys and Girls Clubs, YMCA, Girl Scouts, Boy Scouts, Camp Fire, Inc., California 4-H Programs, and camping organizations that have been operating in California for a period of not less than two years. An applicant does not have to be operating in the county of application in order to be a qualified applicant.

(d) "Constructing" means the purchase or building of a new facility, including the costs of land acquisition and architectural and engineering fees.

(e) "Department" means the Department of the Youth Authority.

(f) "Nonprofit organization" means a youth serving agency or organization that is exempt under Section 501(c)(3) of the Internal Revenue Code and is owned and operated by one or more corporations or associations with no part of the net earnings benefiting any private shareholder or individual.

(g) "Programs" means services and activities provided in a youth center, including, but not limited to, recreation, health and fitness, citizenship and leadership development, job training, delinquency prevention such as antigang programs, teen pregnancy prevention programs, and counseling for such problems as drug and alcohol abuse.

991. Moneys in the fund, up to twenty-five million dollars ($25,000,000), upon appropriation to the department, shall be available for allocation by the department in accordance with this chapter, for grants to nonprofit organizations for acquiring, renovating, or constructing youth centers. Of these moneys, an

amount not to exceed $1^1/_2$ percent thereof shall be available to the department for administrative costs associated with this article.

992. (a) The department shall, upon appropriation pursuant to Section 993.3, make grants to nonprofit organizations for the purpose of acquiring, renovating, or constructing youth centers. This article shall not apply to agencies or institutions under the jurisdiction of the department prior to the operative date of this section.

(b) A nonprofit organization receiving a grant for the acquisition of a facility to be used as a youth center shall agree that the facility will be used for that purpose for at least 10 years from the date of acquisition.

(c) A nonprofit organization receiving a grant for renovation of an existing facility to be used as a youth center shall agree that the facility will be used for that purpose for at least 10 years.

(d) A nonprofit organization receiving a grant for the construction of a facility to be used as a youth center shall agree that the facility will be used for that purpose for at least 20 years after completion of construction.

(e) Prior to the grant award, and as a condition to receipt of the award, the nonprofit organization shall execute and deliver a promissory note to the department in a form approved by the department. The amount of the note shall be the amount of the grant, reduced proportionately for each year of compliance as set forth in subdivisions (b), (c), and (d). The department shall have a lien on any facility construction, acquired, renovated, or remodeled under this act for the period of time described in subdivisions (b), (c), and (d). The lien shall be evidenced by a deed of trust or other suitable recordable document approved by the department. This subdivision shall not apply when the department determines that application of its provisions is not in the best interests of the public.

(f) Should any of the following events occur, the department may, without the consent of the Department of General Services, foreclose upon the lien, take possession of and sell the property:

(1) The owner of the facility ceases to be a nonprofit organization.

(2) The facility is no longer used for youth center activities.

(g) A facility altered, acquired, renovated, or constructed using funds allocated under this article may not be used and may not be intended to be used for sectarian instruction or as a place for religious worship.

(h) The Director of the Youth Authority, prior to issuing a request for proposal under this article, shall create an advisory committee. This advisory committee shall advise the director on the request for proposal and on the criteria for reviewing and evaluating the responses. The department shall not issue a request for proposal for acquiring, renovating, or constructing youth centers any later than three months after the moneys are deposited in the fund for the purpose of this chapter. The advisory committee shall consist of representatives, including, but not limited to, representatives from

statewide nonprofit youth organizations, local government, probation and law enforcement, and community-based nonprofit organizations serving youth or youth related issues. Any local chapter, branch, group, or other entity within an organization shall not be eligible for funding under this article if a representative of the organization serves on the advisory committee and that representative is a member of the particular chapter, branch, group, or other entity within the larger organization that is applying for the funds.

The department shall review and evaluate proposals from applicants for funding. The proposals shall be consistent with the criteria developed by the department following consultation with the advisory committee.

(i) Proposals from an applicant for youth center funding shall do all of the following:

(1) Document the need for the applicant's proposal.

(2) Contain a written commitment and a plan for the delivery of programs, including, where appropriate, plans for innovative nontraditional programs designed to meet the needs of the youth of the targeted community.

(3) Contain a match for funding that meets the following:

(A) Equal to 15 percent of the total amount requested.

(B) Match is in cash or in kind.

(4) Document the cost effectiveness of the proposal.

(5) Contain a written commitment and plan to develop and implement a process to receive and consider feedback and suggestions from the community served including a separate mechanism for the youth it serves. A board of directors reflecting broad representation of the community shall satisfy the requirement for community input.

(6) Document plans to utilize and coordinate availability of the youth center facilities with other organizations serving the same youth population and, where possible, when the facilities are not being utilized for youth activities, to maximize utilization by other community organizations, including, but not limited to, senior groups and crime victims' and crime prevention organizations.

(j) The department shall rank the proposals received for funding on a priority consideration based on established greatest need, the number of youths that can be served, the most underserved areas, and the most economically disadvantaged areas, both in urban and rural counties. The department shall also evaluate the cost effectiveness of the proposal, the nonprofit organization's experience in programs serving youth, and the proposed utilization of, and coordination with, other agencies serving youth.

(k) The department shall, to the extent possible, and giving consideration to the amount of funds available, attempt to ensure a broad distribution of the funds consistent with the program priorities, in order to meet the needs of the youth in the state.

(*l*) The department shall consider any protest or objection regarding the award of a contract grant, whether submitted before or after the grant award, as long as the protest is filed within the time period established in the request for proposal. All protests or objections shall be made in writing. The protesting party shall be notified by the department in writing of the final decision on the protest. The notification shall set forth the rationale upon which the decision is based.

993. (a) No grant made pursuant to this chapter shall exceed three million dollars ($3,000,000) and each grant shall reflect the reasonable costs for acquisition and construction of a facility, taking into consideration its location, size, and proposed use.

(b) In a youth center facility that is acquired, renovated, or constructed in conjunction with other groups, funds received under this article may support only the following:

(1) That part of the facility used by qualifying youth.

(2) A proportionate share of the costs based on the extent of use of the facility by qualifying youth.

(c) Facilities shall be acquired, renovated, or constructed not later than three years from the date of any grant awarded unless the time is extended, for good cause, by the department.

SEC. 3. (a) The sum of one hundred million dollars ($100,000,000) is hereby appropriated, without regard to fiscal years, from the General Fund for the purposes set forth in Article 18.8 (commencing with Section 749.3) of Part 1 of Division 2 of the Welfare and Institutions Code.

(b) The sum of twenty-five million dollars ($25,000,000) is hereby appropriated, without regard to fiscal years, from the General Fund for the purpose of funding the youth centers provided for in Chapter 2.5 (commencing with Section 990) of Part 1 of Division 2 of the Welfare and Institutions Code.

(c) Neither of the appropriations made in this section shall be valid unless both are enacted in full as provided in this section.

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 protect the life and safety of the persons confined or employed in county juvenile facilities which, in their current overcrowded condition, pose a threat to public safety and security, and to construct youth centers to prevent at-risk behavior, it is necessary that construction and remodeling of these facilities proceed as expeditiously as possible.

CHAPTER 500

An act to add Section 14672.14 to the Government Code, to add Sections 3054 and 6259 to the Penal Code, and to amend Section 749.22 of the Welfare and Institutions Code, relating to state property, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 15, 1998. Filed with Secretary of State September 15, 1998.]

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

SECTION 1. Section 14672.14 is added to the Government Code, to read:

14672.14. (a) Notwithstanding Section 14670, the Director of General Services, with the consent of the Department of Corrections, upon those terms and conditions that the director deems in the best interests of the state, may exchange, sell, or lease to the City of Chino up to 290 acres of real property, of which 170 acres are currently leased to the City of Chino pursuant to Section 14672.15. The sale, lease, or exchange of land shall be for the development and maintenance of a public park, public recreational uses, and open-space uses, including the development of a golf course. Any lease executed pursuant to this section shall not exceed 55 years, be nonassignable with the city having a right to sublease a portion or all of the premises for uses consistent with those permitted in the lease, and be consistent with a memorandum of understanding negotiated between the Department of Corrections, the Department of General Services, and the City of Chino.

(b) The Department of General Services with the Department of Corrections shall complete the initial phase of the Master Land Use Plan (MLUP) authorized in the Budget Act of 1998, including preliminary siting of the golf course development, which shall be consistent with the MLUP, not later than August 1, 1999. If feasible, the golf course development shall be contiguous to the existing golf driving range at Ruben Ayala Park. The state shall consult with the City of Chino on any or all aspects of completion of the MLUP as it relates to development of California Institution for Men (CIM) land for a public park, development of CIM land for recreational uses, use of CIM land for open-space purposes, and development of CIM land for a golf course.

SEC. 2. Section 3054 is added to the Penal Code, to read:

3054. (a) (1) The Department of Corrections shall establish three pilot programs that provide intensive training and counseling programs for female parolees to assist in the successful reintegration of those parolees into the community upon release or discharge from

prison and after completion of in-prison therapeutic community substance abuse treatment programs.

(2) The Director of Corrections shall determine the counties in which the pilot programs are established.

(b) (1) The services offered in the pilot programs may include, but shall not be limited to, drug and alcohol abuse treatment, cognitive skills development, education, life skills, job skills, victim impact awareness, anger management, family reunification, counseling, vocational training and support, residential care, and placement in affordable housing and employment opportunities.

(2) Ancillary services such as child care and reimbursement of transportation costs shall be provided to the extent necessary to permit full participation by female offenders in employment assistance, substance abuse treatment, and other program elements.

(3) The pilot programs shall include a case management component to assess the social services and other needs of participating in the social services, education, job training, and other programs most likely to result in their recovery and employment success.

(c) Subject to appropriation of funds, the department is authorized to enter into contracts, or amend existing contracts, for community residential treatment services for offenders and minor children in an offender's custody in order to carry out the goals stated in paragraph (1) of subdivision (a).

(d) (1) It is the intent of the Legislature that the programs demonstrate the cost-effectiveness of providing the enhanced services described in subdivision (b), based upon an annual evaluation of a representative sample of female parolees, in order to determine the impact of these services upon the criminal recidivism, employment, and welfare dependency of the offenders and their families.

(2) The department, with the assistance of an independent consultant with expertise in criminal justice programs, shall complete a report evaluating the cost-effectiveness of the pilot programs in regard to the effect of the programs (A) on the recidivism of participating female offenders compared with a comparable nonparticipating group of female offenders and (B) on the employment of female offenders and the welfare dependency of a female offender's family. The report shall be provided to the Governor and the Chairperson of the Joint Legislative Budget Committee and the chairpersons of the fiscal committees of both houses of the Legislature by January 1, 2002.

SEC. 3. Section 6259 is added to the Penal Code, to read:

6259. (a) For the purposes of acquiring the 2,000 community correctional facility beds and notwithstanding any other provision of law, the procurement and performance of any contracts authorized pursuant to Chapter 9.5 (commencing with Section 6250) of Part 3 of Title 7 of the Penal Code shall be conducted under the provisions

of Article 4 (commencing with Section 10335) of Part 2 of Division 2 of the Public Contract Code, as a contract for services.

(b) The procurement shall include requirements that the contractor provide to the state options to purchase all or a portion of the facilities and equipment used by the vendor in the performance of the contract and that the consideration of the proposals include the terms of these options. The contract shall provide specifications for the vendor's acquisition of sites, compliance with environmental requirements, preparation of plans and specifications for, and development and operation of, facilities, and such other matters as may be reasonably incidental to the development, operation, and potential future acquisition by the state pursuant to an option to purchase the facilities.

(c) The exercise of an option to purchase shall be subject to the jurisdiction of the State Public Works Board and the requirements of the master plan for prison construction, Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code, the State Contract Act, Chapter 1 (commencing with Section 10100) of Part 2 of Division 2 of the Public Contract Code, the State Building Construction Act of 1955, Part 10b (commencing with Section 15800) of Division 3 of the Government Code, and the Property Acquisition Law, and Part 11 (commencing with Section 15850) of Division 3 of the Government Code, but these provisions shall not apply to the procurement of the option to purchase or the procurement and performance of the contract.

SEC. 4. The Department of Corrections may study, design, and construct 10 semiautonomous administrative segregation buildings at existing prisons for a total of 1,000 cells.

SEC. 5. The Department of Corrections may contract for 2,000 community correctional facility (CCF) beds pursuant to the following conditions:

(a) The total number of beds at any one CCF, whether existing prior to the enactment of this section or authorized pursuant to this section, may not exceed a design capacity of 550 beds, the average annual occupancy of which shall be approximately 500 beds per day as a result of the contracting authority granted by this section.

(b) There shall be no operational link to, nor sharing of common services with, another facility.

(c) Any contract authorized pursuant to this section shall include an option to purchase the facility.

(d) Not less than 1,000 of the beds authorized by this section shall include therapeutic drug treatment programming, including availability of aftercare treatment for an average of 150 days for 50 percent of the in-prison program graduates from the new beds. The additional therapeutic drug treatment programming authorized by this act shall be in accordance with protocols established by the department.

(e) Any contract executed pursuant to subdivision (a) shall provide for the assignment of all inmates to work, education, training, or substance abuse treatment programs to the maximum extent feasible. The Department of Corrections shall evaluate the performance of each operator of the community correctional facilities established under this section in regard to compliance with the requirements for the full assignment of inmates, and shall evaluate the effectiveness of the work, education, training, and substance abuse programs in regard to such factors as inmate recidivism and postrelease employment.

SEC. 6. Section 749.22 of the Welfare and Institutions Code is amended to read:

749.22. To be eligible for this grant, each county shall be required to establish a multiagency juvenile justice coordinating council that shall develop and implement a continuum of county-based responses to juvenile crime. The coordinating councils shall, at a minimum, include the chief probation officer, as chair, and one representative each from the district attorney's office, the public defender's office, the sheriff's department, the board of supervisors, the department of social services, the department of mental health, a community-based drug and alcohol program, a city police department, the county office of education or a school district, and an at-large community representative. In order to carry out its duties pursuant to this section, a coordinating council shall also include representatives from nonprofit community-based organizations providing services to minors. The board of supervisors shall be informed of community-based organizations participating on a coordinating council. The coordinating councils shall develop a comprehensive, multiagency plan that identifies the resources and strategies for providing an effective continuum of responses for the prevention, intervention, supervision, treatment, and incarceration of male and female juvenile offenders, including strategies to develop and implement locally based or regionally based out-of-home placement options for youths who are persons described in Section 602. Counties may utilize community punishment plans developed pursuant to grants awarded from funds included in the 1995 Budget Act to the extent the plans address juvenile crime and the juvenile justice system or local action plans previously developed for this program. The plan shall include, but not be limited to, the following components:

(a) An assessment of existing law enforcement, probation, education, mental health, health, social services, drug and alcohol and youth services resources which specifically target at-risk juveniles, juvenile offenders, and their families.

(b) An identification and prioritization of the neighborhoods, schools, and other areas in the community that face a significant public safety risk from juvenile crime, such as gang activity, daylight burglary, late-night robbery, vandalism, truancy, controlled

substance sales, firearm-related violence, and juvenile alcohol use within the council's jurisdiction.

(c) A local action plan (LAP) for improving and marshaling the resources set forth in subdivision (a) to reduce the incidence of juvenile crime and delinquency in the areas targeted pursuant to subdivision (b) and the greater community. The councils shall prepare their plans to maximize the provision of collaborative and integrated services of all the resources set forth in subdivision (a), and shall provide specified strategies for all elements of response, including prevention, intervention, suppression, and incapacitation, to provide a continuum for addressing the identified male and female juvenile crime problem, and strategies to develop and implement locally based or regionally based out-of-home placement options for youths who are persons described in Section 602.

(d) Develop information and intelligence-sharing systems to ensure that county actions are fully coordinated, and to provide data for measuring the success of the grantee in achieving its goals. The plan shall develop goals related to the outcome measures that shall be used to determine the effectiveness of the program.

(e) Identify outcome measures which shall include, but not be limited to, the following:

(1) The rate of juvenile arrests.

(2) The rate of successful completion of probation.

(3) The rate of successful completion of restitution and court-ordered community service responsibilities.

SEC. 7. This act shall become operative only if Assembly Bill 2321 and Senate Bill 2108 of the 1997–98 Regular Session are enacted and become effective on or before January 1, 1999.

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:

It is estimated that the California prison system will run out of capacity to house the anticipated population growth by mid-2000. In order to have the critically needed prison beds available, it is essential that this act take effect immediately.

CHAPTER 501

An act to add and repeal Article 4 (commencing with Section 6045) of Chapter 5 of Title 7 of Part 3 of the Penal Code, relating to mentally ill criminal offenders.

[Approved by Governor September 15, 1998. Filed with Secretary of State September 15, 1998.]

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

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

(a) County jail inmate populations nearly doubled between 1984 and 1996, from 43,000 to 72,000. Court-ordered population caps have affected 25 counties and represent 70 percent of the average daily population in county jails. As a result of these caps and a lack of bed space, more than 275,000 inmates had their jail time eliminated or reduced in 1997.

(b) An estimated 7 to 15 percent of county jail inmates are seriously mentally ill. Although an estimated forty million dollars ($40,000,000) per year is spent by counties on mental health treatment within the institution, and that figure is rising rapidly, there are few treatment and intervention resources available to prevent recidivism after mentally ill offenders are released into the community. This leads to a cycle of rearrest and reincarceration, contributing to jail overcrowding and early releases, and often culminates in state prison commitments.

(c) The Pacific Research Institute estimates that annual criminal justice and law enforcement expenditures for persons with serious mental illnesses were between one billion two hundred million dollars ($1,200,000,000) and one billion eight hundred million dollars ($1,800,000,000) in 1993–94. The state cost in 1996–97 to incarcerate and provide mental health treatment to a seriously mentally ill state prisoner is between twenty-one thousand nine hundred seventy-eight dollars ($21,978) and thirty thousand six hundred ninety-eight dollars ($30,698) per year. Estimates of the state prison population with mental illness ranges from 8 to 20 percent.

(d) According to a 1993 study by state mental health directors, the average estimated cost to provide comprehensive mental health treatment to a severely mentally ill person is seven thousand dollars ($7,000) per year, of which the state and county cost is four thousand dollars ($4,000) per year. The 1996 cost for integrated mental health services for persons most difficult to treat averages between fifteen thousand dollars ($15,000) and twenty thousand dollars ($20,000) per year, of which the state and county costs are between nine thousand dollars ($9,000) and twelve thousand dollars ($12,000) per person.

(e) A 1997 study by the State Department of Mental Health of 3,000 seriously mentally ill persons found that less than 2 percent of the persons receiving regular treatment were arrested in the previous six months, indicating that crimes and offenses are caused by those not receiving treatment. Another study of 85 persons with serious mental illness in the Los Angeles County Jail found that only three of the persons were under conservatorship at the time of their arrest, and only two had ever received intensive treatment. Another study of 500 mentally ill persons charged with crimes in San Francisco

found that 94 percent were not receiving mental health treatment at the time the crimes were committed.

(f) Research indicates that a continuum of responses for mentally ill offenders that includes prevention, intervention, and incarceration can reduce crime, jail overcrowding, and criminal justice costs.

(g) Therefore, it is the intent of the Legislature that grants shall be provided to counties that develop and implement a comprehensive, cost-effective plan to reduce the rate of crime and offenses committed by persons with serious mental illness, as well as reduce jail overcrowding and local criminal justice costs related to mentally ill offenders.

SEC. 2. Article 4 (commencing with Section 6045) is added to Chapter 5 of Title 7 of Part 3 of the Penal Code, to read:

Article 4. Mentally Ill Offender Crime Reduction Grants

6045. The Board of Corrections shall administer and award mentally ill offender crime reduction grants on a competitive basis to counties that expand or establish a continuum of swift, certain, and graduated responses to reduce crime and criminal justice costs related to mentally ill offenders, as defined in paragraph (1) of subdivision (b) and subdivision (c) of Section 5600.3 of the Welfare and Institutions Code.

6045.2. (a) To be eligible for a grant, each county shall establish a strategy committee that shall include, at a minimum, the sheriff or director of the county department of corrections in a county where the sheriff is not in charge of administering the county jail system, who shall chair the committee, representatives from other local law enforcement agencies, the chief probation officer, the county mental health director, a superior court judge, a client of a mental health treatment facility, and representatives from organizations that can provide, or have provided, treatment or stability, including income, housing, and caretaking, for persons with mental illnesses.

(b) The committee shall develop a comprehensive plan for providing a cost-effective continuum of graduated responses, including prevention, intervention, and incarceration, for mentally ill offenders. Strategies for prevention and intervention shall include, but are not limited to, both of the following:

(1) Mental health or substance abuse treatment for mentally ill offenders who have been released from law enforcement custody.

(2) The establishment of long-term stability for mentally ill offenders who have been released from law enforcement custody, including a stable source of income, a safe and decent residence, and a conservator or caretaker.

(c) The plan shall include the identification of specific outcome and performance measures and a plan for annual reporting that will

allow the Board of Corrections to evaluate, at a minimum, the effectiveness of the strategies in reducing:

(1) Crime and offenses committed by mentally ill offenders.

(2) Criminal justice costs related to mentally ill offenders.

6045.4. The Board of Corrections, in consultation with the State Department of Mental Health, and the State Department of Alcohol and Drug Programs, shall award grants that provide funding for four years. Funding shall be used to supplement, rather than supplant, funding for existing programs and shall not be used to facilitate the early release of prisoners or alternatives to incarceration. No grant shall be awarded unless the applicant makes available resources in an amount equal to at least 25 percent of the amount of the grant. Resources may include in-kind contributions from participating agencies. In awarding grants, priority shall be given to those proposals which include additional funding that exceeds 25 percent of the amount of the grant.

6045.6. The Board of Corrections, in consultation with the State Department of Mental Health and the State Department of Alcohol and Drug Programs, shall establish minimum standards, funding schedules, and procedures for awarding grants, which shall take into consideration, but not be limited to, all of the following:

(a) Percentage of the jail population with severe mental illness.

(b) Demonstrated ability to administer the program.

(c) Demonstrated ability to develop effective responses to provide treatment and stability for persons with severe mental illness.

(d) Demonstrated history of maximizing federal, state, local, and private funding sources.

(e) Likelihood that the program will continue to operate after state grant funding ends.

6045.8. The Board of Corrections, in consultation with the State Department of Mental Health and the State Department of Alcohol and Drug Programs, shall create an evaluation design for mentally ill offender crime reduction grants that will assess the effectiveness of the program in reducing crime, the number of early releases due to jail overcrowding, and local criminal justice costs. Commencing on June 30, 2000, and annually thereafter, the board shall submit a report to the Legislature based on the evaluation design, with a final report due on December 31, 2004.

6045.9. This article 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.

6046. Funding for mentally ill offender crime reduction grants shall be provided, upon appropriation by the Legislature, in the annual Budget Act. It is the intent of the Legislature to appropriate twenty-five million dollars ($25,000,000) for the purposes of Mentally Ill Offender Crime Reduction Grants in the 1999–2000 fiscal year, subject to the availability of funds. Up to 5 percent of the amount

appropriated in the budget may be available for the board to administer this program, including technical assistance to counties and the development of an evaluation component.

CHAPTER 502

An act to amend and supplement the Budget Act of 1998 (Chapter 324 of the Statutes of 1998), relating to correctional facilities, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 15, 1998. Filed with Secretary of State September 15, 1998.]

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

SECTION 1. Item 5240-002-0001 is added to Section 2.00 of the Budget Act of 1998 (Chapter 324 of the Statutes of 1998) to read:

5240−002−0001—For support of the Department of Corrections 23,500,000

Provisions:

1. Of the amount appropriated by this item, $10,000,000 shall be available until December 31, 1999, only for (a) an additional 2,000 beds of therapeutic drug treatment programming, including availability of aftercare treatment for an average of 150 days for 50 percent of the in−prison program graduates from the new beds, and (b) support for an average of 150 days of aftercare treatment for 50 percent of the in prison program graduates from existing drug treatment beds. The additional therapeutic drug treatment programming authorized by this provision shall be in accordance with protocols established by the Department of Corrections.
2. Of the amount appropriated in this item, $5,500,000 is provided to expand casework services for parolees in need of assistance in their reintegration into society after their release from prison.
3. Of the amount appropriated in this item, $1,000,000 is provided to expand existing programs to provide inmates and parolees with comprehensive support services,

including job development and job placement assistance.

4. Of the amount appropriated in this item, $1,000,000 is provided to enhance prerelease programs for inmates. The programs funded with this augmentation shall focus on assistance for inmates who are deemed to be at a high risk of recidivism upon their release from prison.

5. Of the amount appropriated in this item, $6,000,000 is provided for three pilot programs to assist drug−addicted female offenders as provided in Section 3054 of the Penal Code.

SEC. 2. Item 5240-004-0001 is added to Section 2.00 of the Budget Act of 1998 (Chapter 324 of the Statutes of 1998), to read:

5240−004−0001—For support of the Department of Corrections 2,589,000

Provisions:

1. All of the funds appropriated by this item shall be provided for support staff for planning, design, construction, and activation of the administrative segregation housing units for which an appropriation is provided in Item 5240−303−0001.

SEC. 3. Item 5240-303-0001 is added to Section 2.00 of the Budget Act of 1998 (Chapter 324 of the Statutes of 1998), to read:

5240−303−0001—For capital outlay, Department of Corrections 71,520,000

Schedule:

(1) Statewide: Ten administrative segregation housing units, preliminary plans, working drawings, and construction 71,520,000

Provisions:

1. The funds appropriated by Schedule 1 shall be used by the department to complete design and construction of one administrative segregation housing unit at each of 10 existing correctional institutions. These 10 housing units shall have a total capacity to house 1,900 male inmates.

2. Notwithstanding any other provision of law, the net proceeds of any moneys received from

the disposition of surplus property at the California Institution for Men, Chino, shall be allocated to fully or partially reimburse the General Fund for the costs of the project.

3. Funds appropriated by Schedule 1 shall be available as necessary for the purposes of site studies and suitability reports, environmental studies, master planning, architectural programming, schematics, preliminary plans, working drawings, construction, long lead, and equipment items.
4. Of the funds appropriated by Schedule 1, a maximum of seven hundred sixty thousand dollars ($760,000) of the funds may be made available for mitigation costs of local governments, and a maximum of seven hundred sixty thousand dollars ($760,000) of the funds may be made available to the county superintendent of schools for mitigation costs of school districts. These funds shall be made available pursuant to subdivisions (c) and (d) of Section 7005.5 of the Penal Code.
5. The funds appropriated by Schedule 1 shall not be used to construct any additional administrative segregation housing units on the grounds of either San Quentin State Prison or the Northern California Women's Facility.

SEC. 4. Item 5430-111-0001 is added to Section 2.00 of the Budget Act of 1998 (Chapter 324 of the Statutes of 1998), to read:

5430−111−0001—For local assistance, Board of Corrections 27,000,000

Provisions:

1. The funds appropriated by this item shall be expended only for competitive, statewide grants to counties for the purpose of expanding or establishing a continuum of responses to reduce crime and criminal justice costs related to mentally ill offenders. The funds shall be available only if a statute is enacted, and becomes operative on or before January 1, 1999, that establishes that program.
2. Of the amount appropriated in this item, up to $2,000,000 shall be awarded to counties for purposes of planning and developing the continuum of responses.

3. Of the funds appropriated by this item, up to 5 percent may be transferred to Item 5430−001−0001 for expenditure by the Board of Corrections for the oversight and implementation of competitive, statewide grants to counties pursuant to Provision 1. The funds to be allocated under this provision shall be available only if a statute is enacted and becomes operative on or before January 1, 1999, that establishes that program.
4. Notwithstanding any other provision of law, the funds appropriated by this item shall be available for expenditure until December 31, 2004.

SEC. 5. Item 5430-112-0001 is added to Section 2.00 of the Budget Act of 1998 (Chapter 324 of the Statutes of 1998), to read:

5430−112−0001—For local assistance, Board of Corrections 50,000,000

Provisions:

1. The funds appropriated by this item shall be expended only for the Juvenile Crime Enforcement and Accountability Challenge Grant Program, pursuant to Article 18.7 (commencing with Section 749.2) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code.
2. Of the funds appropriated by this item, up to 5 percent may be transferred to Item 5430−001−0001 for expenditure by the Board of Corrections for the oversight and implementation of the Juvenile Crime Enforcement and Accountability Challenge Grant Program.
3. Notwithstanding any other provision of law, the funds appropriated by this item shall be available for expenditure until June 30, 2004.

SEC. 6. This act shall become operative only if Assembly Bill 2321 and Senate Bill 491 of the 1997–98 Regular Session are enacted and become effective on or before January 1, 1999.

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

It is estimated that the California prison system will run out of capacity to house the anticipated population growth by mid-2000. In

order to have the critically needed prison beds available, it is essential that this act take effect immediately.

CHAPTER 503

An act to amend Section 1 of Chapter 889 of the Statutes of 1997, relating to education, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 15, 1998. Filed with Secretary of State September 15, 1998.]

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

SECTION 1. Section 1 of Chapter 889 of the Statutes of 1997 is amended to read:

Section 1. The sum of nine million two hundred fourteen thousand dollars ($9,214,000) is hereby appropriated in accordance with the following schedule:

(a) (1) Seven hundred fifty thousand dollars ($750,000) from the General Fund to the Superintendent of Public Instruction for allocation to the California Museum Foundation in the 1997–98 fiscal year. Funds appropriated in this subdivision shall be used on a one-time basis for a variety of educational services and programs to enhance children's appreciation and understanding of African-American history, culture, and the visual arts. The Legislature finds and declares that these programs serve an essential educational purpose as a resource for public elementary and secondary schools and are offered to public school pupils and others. It is, therefore, the intent of the Legislature that, notwithstanding Section 41202 of the Education Code, the appropriation made by this paragraph shall be counted towards the state's obligation for minimum funding of the public school system under Section 8 of Article XVI of the California Constitution.

(2) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by paragraph (1) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 1995–96 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code, for the 1995–96 fiscal year.

(b) (1) Five hundred thousand dollars ($500,000) from the General Fund to the Superintendent of Public Instruction for allocation to the following school districts in the 1997–98 fiscal year:

(A)	San Diego Unified School District	$350,000
(B)	Sweetwater Union School District	100,000
(C)	Vista Unified School District	25,000
(D)	San Ysidro School District	25,000

(2) Funds appropriated in this subdivision shall be used on a one-time basis for an after school youth violence prevention and intervention program designed in cooperation with local law enforcement officials to protect middle grade pupils from negative influences during the most critical hours of the day.

(3) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by paragraph (1) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 1995–96 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code, for the 1995–96 fiscal year.

(c) (1) Fifty thousand dollars ($50,000) from the General Fund to the Superintendent of Public Instruction for allocation to the Lodi Unified School District in the 1997–98 fiscal year. Funds appropriated in this subdivision shall be used on a one-time basis for a central coordinator to recruit and train mentors in the establishment of a "Job Shadowing" program, develop internships for pupils within the Lodi area, and develop partnerships with local small businesses located within the district boundaries.

(2) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by paragraph (1) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 1995–96 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code, for the 1995–96 fiscal year.

(d) (1) Two hundred fifty thousand dollars ($250,000) from the General Fund to the Superintendent of Public Instruction for allocation to the Napa Valley Unified School District for the Napa County Regional Occupational Center/Program in the 1997–98 fiscal year. Funds appropriated in this subdivision shall be used on a one-time basis to purchase computer equipment and other instructional materials for the Napa New Technology High School.

(2) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the

appropriation made by paragraph (1) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 1995–96 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code, for the 1995–96 fiscal year.

(f) (1) The sum of one million five hundred thousand dollars ($1,500,000) from the General Fund to the Superintendent of Public Instruction for allocation to the California Indian Education Centers Program in the 1997–98 fiscal year in accordance with Article 6 (commencing with Section 33380) of Chapter 3 of Part 20 of the Education Code. Notwithstanding Section 41205 of the Education Code, the Legislature finds and declares that 100 percent of this appropriation shall be used only for direct instructional services pursuant to Section 41205 of the Education Code and shall be applied to the state's obligation to provide funding to school districts for purposes of Section 8 of Article XVI of the California Constitution.

(2) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by paragraph (1) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 1995–96 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code, for the 1995–96 fiscal year.

(h) (1) Eight hundred thousand dollars ($800,000) from the General Fund to the Superintendent of Public Instruction in the 1997–98 fiscal year for allocation to a local education agency. Funds appropriated in this subdivision shall be used by the Superintendent of Public Instruction to develop an English language development examination pursuant to Chapter 7 (commencing with Section 60810) of Part 33 of the Education Code. This subdivision shall not become operative unless and until legislation authorizing the development of an English language development examination becomes effective on or before January 1, 1998.

(2) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by paragraph (1) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 1995–96 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined

in subdivision (e) of Section 41202 of the Education Code, for the 1995–96 fiscal year.

(i) (1) Two million two hundred seventy-three thousand dollars ($2,273,000) from the General Fund to the Superintendent of Public Instruction, for allocation to school districts in the 1997–98 fiscal year in an equal amount per pupil based upon each school districts' October enrollment in grades 7 to 12, inclusive, in the prior fiscal year. Funds appropriated in this subdivision shall be used on a one-time basis for school libraries.

(2) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by paragraph (1) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 1995–96 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code, for the 1995–96 fiscal year.

(j) (1) One million six hundred forty-six thousand dollars ($1,646,000) from the General Fund to the Superintendent of Public Instruction for allocation to the San Joaquin County Office of Education in the 1997–98 fiscal year for educational and operational costs for the Professional Development Center; technology training for teachers, pupils, and support staff; capital outlay and startup; and reading and mathematics projects.

(2) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by paragraph (1) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 1994–95 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code, for the 1994–95 fiscal year.

(k) (1) One hundred thousand dollars ($100,000) from the General Fund to the Superintendent of Public Instruction for allocation to the St. Helena Unified School District in the 1997–98 fiscal year. Funds appropriated in this subdivision shall be used on a one-time basis for costs associated with the establishment of an agricultural center at St. Helena High School.

(2) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by paragraph (1) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 1995–96 fiscal year, and included within the "total allocations to

school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code, for the 1995–96 fiscal year.

(*l*) (1) Three hundred ninety-five thousand dollars ($395,000) from the General Fund to the Superintendent of Public Instruction for allocation to the Lompoc Unified School District in the 1997–98 fiscal year. Funds appropriated in this subdivision shall be used on a one-time basis for the Cabrillo High School Aquarium expansion project.

(2) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by paragraph (1) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 1995–96 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code, for the 1995–96 fiscal year.

(m) (1) Four hundred fifty thousand dollars ($450,000) from the General Fund to the Superintendent of Public Instruction for allocation to the Burbank Unified School District in the 1997–98 fiscal year. Funds appropriated in this subdivision shall be used on a one-time basis for technology modernization at John Muir Middle School.

(2) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by paragraph (1) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 1995–96 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code, for the 1995–96 fiscal year.

(n) (1) Five hundred thousand dollars ($500,000) from the General Fund to the Los Angeles Unified School District for planning and site preparation for the New California Center for Culture, Education, and Economic Development. The Los Angeles Unified School District, in consultation with the Los Angeles Community College District, shall develop plans for the center promoting all of the following and shall report to the Legislature on its plans for establishment of the center by February 15, 1998:

(A) The cultural and historical contributions of Latinos and other ethnic groups to California.

(B) The development of Latino film archives.

(C) Educational programs in emerging multimedia technologies.

(D) Educational programs providing specialized instruction.

(2) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by paragraph (1) shall be deemed to be "General Fund revenues appropriated to school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 1995–96 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code, for the 1995–96 fiscal year.

SEC. 2. The unencumbered balance of the funds appropriated in subdivision (aa) of Section 41 of Chapter 299 of the Statutes of 1997 is hereby reappropriated to the Superintendent of Public Instruction for allocation to the Montebello Unified School District for the same purposes as set forth in subdivision (aa) of Section 41 of Chapter 299 of the Statutes of 1997.

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

In order to implement the the important education finance provisions of this act as soon as possible during the 1998–99 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 504

An act to amend Section 5535 of the Business and Professions Code, and to amend Sections 16101, 16956, and 16959 of the Corporations Code, relating to architecture.

[Approved by Governor September 15, 1998. Filed with Secretary of State September 15, 1998.]

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

SECTION 1. Section 5535 of the Business and Professions Code is amended to read:

5535. As used in this article, the word "person" includes any individual, firm, corporation, or limited liability partnership.

SEC. 2. Section 16101 of the Corporations Code is amended to read:

16101. As used in this chapter, the following terms and phrases have the following meanings:

(1) "Business" includes every trade, occupation, and profession.

(2) "Debtor in bankruptcy" means a person who is the subject of either of the following:

(A) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application.

(B) A comparable order under federal, state, or foreign law governing insolvency.

(3) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

(4) (A) "Foreign limited liability partnership" means a partnership, other than a limited partnership, formed pursuant to an agreement governed by the laws of another jurisdiction and denominated or registered as a limited liability partnership or registered limited liability partnership under the laws of that jurisdiction (i) in which each partner is a licensed person or a person licensed or authorized to provide professional limited liability partnership services in a jurisdiction or jurisdictions other than this state, (ii) which is licensed under the laws of the state to engage in the practice of architecture, the practice of public accountancy, or the practice of law, or (iii) which (I) is related to a registered limited liability partnership that practices public accountancy or, to the extent permitted by the State Bar, practices law or is related to a foreign limited liability partnership and (II) provides services related or complementary to the professional limited liability partnership services provided by, or provides services or facilities to, that registered limited liability partnership or foreign limited liability partnership.

(B) For the purposes of clause (iii) of subparagraph (A), a partnership is related to a registered limited liability partnership or foreign limited liability partnership if (i) at least a majority of the partners in one partnership are also partners in the other partnership, or (ii) at least a majority in interest in each partnership hold interests in or are members of another person, except an individual, and each partnership renders services pursuant to an agreement with that other person, or (iii) one partnership, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the other partnership.

(5) "Licensed person" means any person who is duly licensed, authorized, or registered under the provisions of the Business and Professions Code to provide professional limited liability partnership services or who is lawfully able to render professional limited liability partnership services in this state.

(6) (A) "Registered limited liability partnership" means a partnership, other than a limited partnership, formed pursuant to an agreement governed by Article 10 (commencing with Section 16951), that is registered under Section 16953 and (i) each of the partners of which is a licensed person or a person licensed or authorized to provide professional limited liability partnership

services in a jurisdiction or jurisdictions other than this state, (ii) is licensed under the laws of the state to engage in the practice of architecture, practice of public accountancy, or the practice of law, or (iii)(I) is related to a registered limited liability partnership that practices public accountancy or, to the extent permitted by the State Bar, practices law or is related to a foreign limited liability partnership and (II) provides services related or complementary to the professional limited liability partnership services provided by, or provides services or facilities to, that registered limited liability partnership or foreign limited liability partnership.

(B) For the purposes of clause (iii) of subparagraph (A), a partnership is related to a registered limited liability partnership or foreign limited liability partnership if (i) at least a majority of the partners in one partnership are also partners in the other partnership, or (ii) at least a majority in interest in each partnership hold interests in or are members of another person, other than an individual, and each partnership renders services pursuant to an agreement with that other person, or (iii) one partnership, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the other partnership.

(7) "Partnership" means an association of two or more persons to carry on as coowners a business for profit formed under Section 16202, predecessor law, or comparable law of another jurisdiction, and includes, for all purposes of the laws of this state, a registered limited liability partnership.

(8) "Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

(9) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(10) "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.

(11) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited partnership, limited liability partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(12) "Professional limited liability partnership services" means the practice of architecture, the practice of public accountancy, or the practice of law.

(13) "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

(14) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(15) "Statement" means a statement of partnership authority under Section 16303, a statement of denial under Section 16304, a statement of dissociation under Section 16704, a statement of dissolution under Section 16805, a statement of conversion under Section 16906, a statement of merger under Section 16915, or an amendment or cancellation of any of the foregoing.

(16) "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

(17) The inclusion of the practice of architecture as a professional limited liability partnership service permitted by this section shall extend only until January 1, 2002.

SEC. 3. Section 16956 of the Corporations Code is amended to read:

16956. (a) At the time of registration pursuant to Section 16953, in the case of a registered limited liability partnership, and Section 16959, in the case of a foreign limited liability partnership, and at all times during which those partnerships shall transact intrastate business, every registered limited liability partnership and foreign limited liability partnership, as the case may be, shall be required to provide security for claims against it as follows:

(1) For claims based upon acts, errors, or omissions arising out of the practice of public accountancy, a registered limited liability partnership or foreign limited liability partnership providing accountancy services shall comply with one, or pursuant to subdivision (b) some combination, of the following:

(A) Maintaining a policy or policies of insurance against liability imposed on or against it by law for damages arising out of claims in an amount for each claim of at least one hundred thousand dollars ($100,000) multiplied by the number of licensed persons rendering professional services on behalf of the partnership; however, the total aggregate limit of liability under the policy or policies of insurance for partnerships with fewer than five licensed persons shall not be less than five hundred thousand dollars ($500,000), and for all other partnerships is not required to exceed five million dollars ($5,000,000) in any one designated period, less amounts paid in defending, settling, or discharging claims as set forth in this subparagraph. The policy or policies may be issued on a claims-made or occurrence basis, and shall cover: (i) in the case of a claims-made policy, claims initially asserted in the designated period, and (ii) in the case of an occurrence policy, occurrences during the designated period. For purposes of this subparagraph, "designated period" means a policy year or any other period designated in the policy that is not greater than 12 months. The impairment or exhaustion of the aggregate limit of liability by amounts paid under the policy in connection with the settlement, discharge, or defense of claims

applicable to a designated period shall not require the partnership to acquire additional insurance coverage for that designated period. The policy or policies of insurance may be in a form reasonably available in the commercial insurance market and may be subject to those terms, conditions, exclusions, and endorsements that are typically contained in those policies. A policy or policies of insurance maintained pursuant to this subparagraph may be subject to a deductible or self-insured retention.

Upon the dissolution and winding up of the partnership, the partnership shall, with respect to any insurance policy or policies then maintained pursuant to this subparagraph, maintain or obtain an extended reporting period endorsement or equivalent provision in the maximum total aggregate limit of liability required to comply with this subparagraph for a minimum of three years if reasonably available from the insurer.

(B) Maintaining in trust or bank escrow, cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance or surety companies as security for payment of liabilities imposed by law for damages arising out of all claims in an amount of at least one hundred thousand dollars ($100,000) multiplied by the number of licensed persons rendering professional services on behalf of the partnership; however, the maximum amount of security for partnerships with fewer than five licensed persons shall not be less than five hundred thousand dollars ($500,000), and for all other partnerships is not required to exceed five million dollars ($5,000,000). The partnership remains in compliance with this section during a calendar year notwithstanding amounts paid during that calendar year from the accounts, funds, Treasury obligations, letters of credit, or bonds in defending, settling, or discharging claims of the type described in this paragraph, provided that the amount of those accounts, funds, Treasury obligations, letters of credit, or bonds was at least the amount specified in the preceding sentence as of the first business day of that calendar year. Notwithstanding the pendency of other claims against the partnership, a registered limited liability partnership or foreign limited liability partnership shall be deemed to be in compliance with this subparagraph as to a claim if within 30 days after the time that a claim is initially asserted through service of a summons, complaint, or comparable pleading in a judicial or administrative proceeding, the partnership has provided the required amount of security by designating and segregating funds in compliance with the requirements of this subparagraph.

(C) Unless the partnership has satisfied subparagraph (D), each partner of a registered limited liability partnership or foreign limited liability partnership providing accountancy services, by virtue of that person's status as a partner, thereby automatically guarantees payment of the difference between the maximum amount of security required for the partnership by this paragraph and the security

otherwise provided in accordance with subparagraphs (A) and (B), provided that the aggregate amount paid by all partners under these guarantees shall not exceed the difference. Neither withdrawal by a partner nor the dissolution and winding up of the partnership shall affect the rights or obligations of a partner arising prior to withdrawal or dissolution and winding up, and the guarantee provided for in this subparagraph shall apply only to conduct that occurred prior to the withdrawal or dissolution and winding up. Nothing contained in this subparagraph shall affect or impair the rights or obligations of the partners among themselves, or the partnership, including, but not limited to, rights of contribution, subrogation, or indemnification.

(D) Confirming, pursuant to the procedure in subdivision (c), that, as of the most recently completed fiscal year of the partnership, it had a net worth equal to or exceeding ten million dollars ($10,000,000).

(2) For claims based upon acts, errors, or omissions arising out of the practice of law, a registered limited liability partnership or foreign limited liability partnership providing legal services shall comply with one, or pursuant to subdivision (b) some combination, of the following:

(A) Each registered limited liability partnership or foreign limited liability partnership providing legal services shall maintain a policy or policies of insurance against liability imposed on or against it by law for damages arising out of claims in an amount for each claim of at least one hundred thousand dollars ($100,000) multiplied by the number of licensed persons rendering professional services on behalf of the partnership; however, the total aggregate limit of liability under the policy or policies of insurance for partnerships with fewer than five licensed persons shall not be less than five hundred thousand dollars ($500,000), and for all other partnerships is not required to exceed seven million five hundred thousand dollars ($7,500,000) in any one designated period, less amounts paid in defending, settling, or discharging claims as set forth in this subparagraph. The policy or policies may be issued on a claims-made or occurrence basis, and shall cover (i) in the case of a claims-made policy, claims initially asserted in the designated period, and (ii) in the case of an occurrence policy, occurrences during the designated period. For purposes of this subparagraph, "designated period" means a policy year or any other period designated in the policy that is not greater than 12 months. The impairment or exhaustion of the aggregate limit of liability by amounts paid under the policy in connection with the settlement, discharge, or defense of claims applicable to a designated period shall not require the partnership to acquire additional insurance coverage for that designated period. The policy or policies of insurance may be in a form reasonably available in the commercial insurance market and may be subject to those terms, conditions, exclusions, and endorsements that are typically contained in those policies. A policy or policies of insurance

maintained pursuant to this subparagraph may be subject to a deductible or self-insured retention.

Upon the dissolution and winding up of the partnership, the partnership shall, with respect to any insurance policy or policies then maintained pursuant to this subparagraph, maintain or obtain an extended reporting period endorsement or equivalent provision in the maximum total aggregate limit of liability required to comply with this subparagraph for a minimum of three years if reasonably available from the insurer.

(B) Each registered limited liability partnership or foreign limited liability partnership providing legal services shall maintain in trust or bank escrow, cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance or surety companies as security for payment of liabilities imposed by law for damages arising out of all claims in an amount of at least one hundred thousand dollars ($100,000) multiplied by the number of licensed persons rendering professional services on behalf of the partnership; however, the maximum amount of security for partnerships with fewer than five licensed persons shall not be less than five hundred thousand dollars ($500,000), and for all other partnerships is not required to exceed seven million five hundred thousand dollars ($7,500,000). The partnership remains in compliance with this section during a calendar year notwithstanding amounts paid during that calendar year from the accounts, funds, Treasury obligations, letters of credit, or bonds in defending, settling, or discharging claims of the type described in this paragraph, provided that the amount of those accounts, funds, Treasury obligations, letters of credit, or bonds was at least the amount specified in the preceding sentence as of the first business day of that calendar year. Notwithstanding the pendency of other claims against the partnership, a registered limited liability partnership or foreign limited liability partnership shall be deemed to be in compliance with this subparagraph as to a claim if within 30 days after the time that a claim is initially asserted through service of a summons, complaint, or comparable pleading in a judicial or administrative proceeding, the partnership has provided the required amount of security by designating and segregating funds in compliance with the requirement of this subparagraph.

(C) Unless the partnership has satisfied the requirements of subparagraph (D), each partner of a registered limited liability partnership or foreign limited liability partnership providing legal services, by virtue of that person's status as a partner, thereby automatically guarantees payment of the difference between the maximum amount of security required for the partnership by this paragraph and the security otherwise provided in accordance with the provisions of subparagraphs (A) and (B), provided that the aggregate amount paid by all partners under these guarantees shall not exceed the difference. Neither withdrawal by a partner nor the

dissolution and winding up of the partnership shall affect the rights or obligations of a partner arising prior to withdrawal or dissolution and winding up, and the guarantee provided for in this subparagraph shall apply only to conduct that occurred prior to the withdrawal or dissolution and winding up. Nothing contained in this subparagraph shall affect or impair the rights or obligations of the partners among themselves, or the partnership, including, but not limited to, rights of contribution, subrogation, or indemnification.

(D) Confirming, pursuant to the procedure in subdivision (c), that, as of the most recently completed fiscal year of the partnership, it had a net worth equal to or exceeding fifteen million dollars ($15,000,000).

(3) For claims based upon acts, errors, or omissions arising out of the practice of architecture, a registered limited liability partnership or foreign limited liability partnership providing architectural services shall comply with one, or pursuant to subdivision (b) some combination, of the following:

(A) Maintaining a policy or policies of insurance against liability imposed on or against it by law for damages arising out of claims in an amount for each claim of at least one hundred thousand dollars ($100,000) multiplied by the number of licensed persons rendering professional services on behalf of the partnership; however, the total aggregate limit of liability under the policy or policies of insurance for partnerships with fewer persons shall not be less than five hundred thousand dollars ($500,000), and for all other partnerships is not required to exceed five million dollars ($5,000,000) in any one designated period, less amounts paid in defending, settling, or discharging claims as set forth in this subparagraph. The policy or policies may be issued on a claims-made or occurrence basis, and shall cover: (i) in the case of a claims-made policy, claims initially asserted in the designated period, and (ii) in the case of an occurrence policy, occurrences during the designated period. For purposes of this subparagraph, ''designated period'' means a policy year or any other period designated in the policy that is not greater than 12 months. The impairment or exhaustion of the aggregate limit of liability by amounts paid under the policy in connection with the settlement, discharge, or defense of claims applicable to a designated period shall not require the partnership to acquire additional insurance coverage for that designated period. The policy or policies of insurance may be in a form reasonably available in the commercial insurance market and may be subject to those terms, conditions, exclusions, and endorsements that are typically contained in those policies. A policy or policies of insurance maintained pursuant to this subparagraph may be subject to a deductible or self-insured retention.

Upon the dissolution and winding up of the partnership, the partnership shall, with respect to any insurance policy or policies then maintained pursuant to this subparagraph, maintain or obtain an extended reporting period endorsement or equivalent provision

in the maximum total aggregate limit of liability required to comply with this subparagraph for a minimum of three years if reasonably available from the insurer.

(B) Maintaining in trust or bank escrow, cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance or surety companies as security for payment of liabilities imposed by law for damages arising out of all claims in an amount of at least one hundred thousand dollars ($100,000) multiplied by the number of licensed persons rendering professional services on behalf of the partnership; however, the maximum amount of security for partnerships with fewer than five licensed persons shall not be less than five hundred thousand dollars ($500,000), and for all other partnerships is not required to exceed five million dollars ($5,000,000). The partnership remains in compliance with this section during a calendar year notwithstanding amounts paid during that calendar year from the accounts, funds, Treasury obligations, letters of credit, or bonds in defending, settling, or discharging claims of the type described in this paragraph, provided that the amount of those accounts, funds, Treasury obligations, letters of credit, or bonds was at least the amount specified in the preceding sentence as of the first business day of that calendar year. Notwithstanding the pendency of other claims against the partnership, a registered limited liability partnership or foreign limited liability partnership shall be deemed to be in compliance with this subparagraph as to a claim if within 30 days after the time that a claim is initially asserted through service of a summons, complaint, or comparable pleading in a judicial or administrative proceeding, the partnership has provided the required amount of security by designating and segregating funds in compliance with the requirements of this subparagraph.

(C) Unless the partnership has satisfied subparagraph (D), each partner of a registered limited liability partnership or foreign limited liability partnership providing architectural services, by virtue of that person's status as a partner, thereby automatically guarantees payment of the difference between the maximum amount of security required for the partnership by this paragraph and the security otherwise provided in accordance with subparagraphs (A) and (B), provided that the aggregate amount paid by all partners under these guarantees shall not exceed the difference. Neither withdrawal by a partner nor the dissolution and winding up of the partnership shall affect the rights or obligations of a partner arising prior to withdrawal or dissolution and winding up, and the guarantee provided for in this subparagraph shall apply only to conduct that occurred prior to the withdrawal or dissolution and winding up. Nothing contained in this subparagraph shall affect or impair the rights or obligations of the partners among themselves, or the partnership, including, but not limited to, rights of contribution, subrogation, or indemnification.

(D) Confirming, pursuant to the procedure in subdivision (c), that, as of the most recently completed fiscal year of the partnership, it had a net worth equal to or exceeding ten million dollars ($10,000,000).

(b) For purposes of satisfying the security requirements of this section, a registered limited liability partnership or foreign limited liability partnership may aggregate the security provided by it pursuant to subparagraphs (A), (B), (C), and (D) of paragraph (1) of subdivision (a), subparagraphs (A), (B), (C), and (D) of paragraph (2) of subdivision (a), or subparagraphs (A), (B), (C), and (D) of paragraph (3) of subdivision (a), as the case may be. Any registered limited liability partnership or foreign limited liability partnership intending to comply with the alternative security provisions set forth in subparagraph (D) of paragraph (1) of subdivision (a), subparagraph (D) of paragraph (2) of subdivision (a), or subparagraph (D) of paragraph (3) of subdivision (a) shall furnish the following information to the Secretary of State's office, in the manner prescribed in, and accompanied by all information required by, the applicable section:

TRANSMITTAL FORM FOR EVIDENCING COMPLIANCE WITH SECTION 16956(a)(1)(D), SECTION 16956(a)(2)(D), OR SECTION 16956(a)(3)(D) OF THE CALIFORNIA CORPORATIONS CODE

The undersigned hereby confirms the following:

1. _____
Name of registered or foreign limited liability partnership

2. _____
Jurisdiction where partnership is organized

3. _____
Address of principal office

4. The registered or foreign limited liability partnership chooses to satisfy the requirements of Section 16956 by confirming, pursuant to Section 16956(a)(1)(D), 16956(a)(2)(D), or 16956(a)(3)(D) and pursuant to Section 16956(c), that, as of the most recently completed fiscal year, the partnership had a net worth equal to or exceeding ten million dollars ($10,000,000), in the case of a partnership providing accountancy services, fifteen million dollars ($15,000,000) in the case of a partnership providing legal services, or ten million dollars ($10,000,000), in the case of a partnership providing architectural services.

5. _____
Title of authorized person executing this form

6. _____
Signature of authorized person executing this form

(c) Pursuant to subparagraph (D) of paragraph (1) of subdivision (a), subparagraph (D) of paragraph (2) of subdivision (a), or subparagraph (D) of paragraph (3) of subdivision (a), a registered limited liability partnership or foreign limited liability partnership may satisfy the requirements of this section by confirming that, as of the last day of its most recently completed fiscal year, it had a net worth equal to or exceeding the amount required. In order to comply with this alternative method of meeting the requirements established in this section, a registered limited liability partnership or foreign limited liability partnership shall file an annual confirmation with the Secretary of State's office, signed by an authorized member of the registered limited liability partnership or foreign limited liability partnership, accompanied by a transmittal form as prescribed by subdivision (b). In order to be current in a given year, the partnership form for confirming compliance with the optional security requirement shall be on file within four months of the completion of the fiscal year and, upon being filed, shall constitute full compliance with the financial security requirements for purposes of this section as of the beginning of the fiscal year. A confirmation filed during any particular fiscal year shall continue to be effective for the first four months of the next succeeding fiscal year.

(d) Neither the existence of the requirements of subdivision (a) nor the extent of the registered limited liability partnership's or foreign limited liability partnership's compliance with the alternative requirements in this section shall be admissible in court or in any way be made known to a jury or other trier of fact in determining an issue of liability for, or to the extent of, the damages in question.

(e) Notwithstanding any other provision of this section, if a registered limited liability partnership or foreign limited liability partnership is otherwise in compliance with the terms of this section at the time that a bankruptcy or other insolvency proceeding is commenced with respect to the registered limited liability partnership or foreign limited liability partnership, it shall be deemed to be in compliance with this section during the pendency of the proceeding. A registered limited liability partnership that has been the subject of a proceeding and that conducts business after the proceeding ends shall thereafter comply with paragraph (1), (2), or (3) of subdivision (a), in order to obtain the limitations on liability afforded by subdivision (c) of Section 16306.

SEC. 4. Section 16959 of the Corporations Code is amended to read:

16959. (a) (1) Before transacting intrastate business in this state, a foreign limited liability partnership shall comply with all statutory and administrative registration or filing requirements of the state board, commission, or agency that prescribes the rules and regulations governing a particular profession in which the partnership proposes to be engaged, pursuant to the applicable provisions of the Business and Professions Code relating to the profession or applicable rules adopted by the governing board. A foreign limited liability partnership that transacts intrastate business in this state shall within 30 days after the effective date of the act enacting this section or the date on which the foreign limited liability partnership first transacts intrastate business in this state, whichever is later, register with the Secretary of State by submitting to the Secretary of State an application for registration as a foreign limited liability partnership, signed by a person with authority to do so under the laws of the jurisdiction of formation of the foreign limited liability partnership, stating the name of the partnership, the address of its principal office, the name and address of its agent for service of process in this state, a brief statement of the business in which the partnership engages, and any other matters that the partnership determines to include.

(2) Annexed to the application for registration shall be a certificate from an authorized public official of the foreign limited liability partnership's jurisdiction of organization to the effect that the foreign limited liability partnership is in good standing in that jurisdiction, if the laws of that jurisdiction permit the issuance of those certificates, or, in the alternative, a statement by the foreign limited liability partnership that the laws of its jurisdiction of organization do not permit the issuance of those certificates.

(b) The registration shall be accompanied by a fee of seventy dollars ($70).

(c) The Secretary of State shall register as a foreign limited liability partnership any partnership that submits a completed application for registration with the required fee.

(d) The Secretary of State may cancel the filing of the registration if a check or other remittance accepted in payment of the filing fee is not paid upon presentation. Upon receiving written notification that the item presented for payment has not been honored for payment, the Secretary of State shall give a first written notice of the applicability of this section to the agent for service of process or to the person submitting the instrument. Thereafter, if the amount has not been paid by cashier's check or equivalent, the Secretary of State shall give a second written notice of cancellation and the cancellation shall thereupon be effective. The second notice shall be given 20 days or more after the first notice and 90 days or less after the original filing.

(e) A partnership becomes registered as a foreign limited liability partnership at the time of the filing of the initial registration with the Secretary of State or at any later date or time specified in the registration and the payment of the fee required by subdivision (b). A partnership continues to be registered as a foreign limited liability partnership until a notice that it is no longer so registered as a limited liability partnership has been filed pursuant to Section 16960 or, if applicable, once it has been dissolved and finally wound up. The status of a partnership registered as a foreign limited liability partnership and the liability of a partner of that foreign limited liability partnership shall not be adversely affected by errors or subsequent changes in the information stated in an application for registration under subdivision (a) or an amended registration or notice under Section 16960.

(f) The fact that a registration or amended registration pursuant to Section 16960 is on file with the Secretary of State is notice that the partnership is a foreign limited liability partnership and of those other facts contained therein that are required to be set forth in the registration or amended registration.

(g) The Secretary of State shall provide a form for a registration under subdivision (a), which shall include the form for confirming compliance with the optional security requirement pursuant to subdivision (c) of Section 16956.

(h) A foreign limited liability partnership transacting intrastate business in this state shall not maintain any action, suit, or proceeding in any court of this state until it has registered in this state pursuant to this section.

(i) Any foreign limited liability partnership that transacts intrastate business in this state without registration is subject to a penalty of twenty dollars ($20) for each day that unauthorized intrastate business is transacted, up to a maximum of ten thousand dollars ($10,000).

(j) A partner of a foreign limited liability partnership is not liable for the debts or obligations of the foreign limited liability partnership solely by reason of its having transacted business in this state without registration.

(k) A foreign limited liability partnership, transacting business in this state without registration, appoints the Secretary of State as its agent for service of process with respect to causes of action arising out of the transaction of business in this state.

(*l*) "Transact intrastate business" as used in this section means to repeatedly and successively provide professional limited liability partnership services in this state, other than in interstate or foreign commerce.

(m) Without excluding other activities that may not be considered to be transacting intrastate business, a foreign limited liability partnership shall not be considered to be transacting intrastate business merely because its subsidiary or affiliate transacts intrastate business, or merely because of its status as any one or more of the following:

(1) A shareholder of a domestic corporation.

(2) A shareholder of a foreign corporation transacting intrastate business.

(3) A limited partner of a foreign limited partnership transacting intrastate business.

(4) A limited partner of a domestic limited partnership.

(5) A member or manager of a foreign limited liability company transacting intrastate business.

(6) A member or manager of a domestic limited liability company.

(n) Without excluding other activities that may not be considered to be transacting intrastate business, a foreign limited liability partnership shall not be considered to be transacting intrastate business within the meaning of this subdivision solely by reason of carrying on in this state any one or more of the following activities:

(1) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes.

(2) Holding meetings of its partners or carrying on any other activities concerning its internal affairs.

(3) Maintaining bank accounts.

(4) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited liability partnership's securities or maintaining trustees or depositories with respect to those securities.

(5) Effecting sales through independent contractors.

(6) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where those orders require acceptance without this state before becoming binding contracts.

(7) Creating or acquiring evidences of debt or mortgages, liens, or security interest in real or personal property.

(8) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.

(9) Conducting an isolated transaction that is completed within 180 days and not in the course of a number of repeated transactions of a like nature.

(o) A person shall not be deemed to be transacting intrastate business in this state merely because of its status as a partner of a registered limited liability partnership or a foreign limited liability company whether or not registered to transact intrastate business in this state.

(p) The Attorney General may bring an action to restrain a foreign limited liability partnership from transacting intrastate business in this state in violation of this chapter.

(q) Nothing in this section is intended to, or shall, augment, diminish, or otherwise alter existing provisions of law, statutes, or court rules relating to services by a California architect, California public accountant, or California attorney in another jurisdiction, or services by an out-of-state architect, out-of-state public accountant, or out-of-state attorney in California.

SEC. 5. The authorization in this act for registered limited liability partnerships and foreign limited liability partnerships to engage in the practice of architecture shall terminate on January 1, 2002.

CHAPTER 505

An act to amend, repeal, and add Section 1646.7 of, and to add and repeal Sections 1646.9, 2079, and 2245 of, the Business and Professions Code, relating to outpatient care, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 15, 1998. Filed with Secretary of State September 15, 1998.]

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

SECTION 1. Section 1646.7 of the Business and Professions Code is amended to read:

1646.7. (a) A violation of any provision of this article constitutes unprofessional conduct and is grounds for the revocation or suspension of the dentist's permit, license, or both, or the dentist may be reprimanded or placed on probation.

(b) A violation of any provision of this article or Section 1682 is grounds for suspension or revocation of the physician and surgeon's permit issued pursuant to this article by the Board of Dental Examiners of California. The exclusive enforcement authority against a physician and surgeon by the Board of Dental Examiners of California shall be to suspend or revoke the permit issued pursuant to this article. The Board of Dental Examiners of California shall refer a violation of this article by a physician and surgeon to the Medical Board of California for its consideration as unprofessional conduct and further action, if deemed necessary by the Medical Board of

California, pursuant to Chapter 5 (commencing with Section 2000). A suspension or revocation of a physician and surgeon's permit by the Board of Dental Examiners pursuant to this article shall not constitute a disciplinary proceeding or action for any purpose except to permit the initiation of an investigation or disciplinary action by the Medical Board of California as authorized by Section 2220.5.

(c) The proceedings under this section 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 of Dental Examiners of California shall have all the powers granted therein.

(d) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2000, deletes or extends that date.

SEC. 2. Section 1646.7 is added to the Business and Professions Code, to read:

1646.7. (a) A violation of any provision of this article constitutes unprofessional conduct and is grounds for the revocation or suspension of the dentist's permit, license, or both, or the dentist may be reprimanded or placed on probation. The proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

(b) This section shall become operative January 1, 2000.

SEC. 3. Section 1646.9 is added to the Business and Professions Code, to read:

1646.9. (a) Notwithstanding any other provisions of law, including, but not limited to, Section 1646.1, a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) may administer general anesthesia in the office of a licensed dentist for dental patients, without regard to whether the dentist possesses a permit issued pursuant to this article, if all of the following conditions are met:

(1) The physician and surgeon possesses a current license in good standing to practice medicine in this state.

(2) The physician and surgeon holds a valid general anesthesia permit issued by the Board of Dental Examiners of California pursuant to subdivision (b).

(b) (1) A physician and surgeon who desires to administer general anesthesia as set forth in subdivision (a) shall apply to the Board of Dental Examiners of California on an application form prescribed by the board and shall submit all of the following:

(A) The payment of an application fee prescribed by this article.

(B) Evidence satisfactory to the Medical Board of California showing that the applicant has successfully completed a postgraduate residency training program in anesthesiology that is recognized by

the American Council on Graduate Medical Education, as set forth in Section 2079.

(C) Documentation demonstrating that all equipment and drugs required by the Board of Dental Examiners of California are possessed by the applicant and shall be available for use in any dental office in which he or she administers general anesthesia.

(D) Information relative to the current membership of the applicant on hospital medical staffs.

(2) Prior to issuance or renewal of a permit pursuant to this section, the Board of Dental Examiners of California may, at its discretion, require an onsite inspection and evaluation of the facility, equipment, personnel, including, but not limited to, the physician and surgeon, and procedures utilized. At least one of the persons evaluating the procedures utilized by the physician and surgeon shall be a licensed physician and surgeon expert in outpatient general anesthesia who has been authorized or retained under contract by the Board of Dental Examiners of California for this purpose.

(3) The permit of any physician and surgeon who has failed an onsite inspection and evaluation shall be automatically suspended 30 days after the date on which the board notifies the physician and surgeon of the failure unless within that time period the physician and surgeon has retaken and passed an onsite inspection and evaluation. Every physician and surgeon issued a permit under this article shall have an onsite inspection and evaluation at least once every six years. Refusal to submit to an inspection shall result in automatic denial or revocation of the permit.

(c) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2000, deletes or extends that date.

SEC. 4. Section 2079 is added to the Business and Professions Code, to read:

2079. (a) A physician and surgeon who desires to administer general anesthesia in the office of a dentist pursuant to Section 1646.9 shall provide the Medical Board of California with a copy of the application submitted to the Board of Dental Examiners of California pursuant to subdivision (b) of Section 1646.9 and a fee established by the board not to exceed the costs of processing the application as provided in this section.

(b) The Medical Board of California shall review the information submitted and take action as follows:

(1) Inform the Board of Dental Examiners of California whether the physician and surgeon has a current license in good standing to practice medicine in this state.

(2) Verify whether the applicant has successfully completed a postgraduate residency training program in anesthesiology and whether the program has been recognized by the American Council on Graduate Medical Education.

(3) Inform the Board of Dental Examiners of California whether the Medical Board of California has determined that the applicant has successfully completed the postgraduate residency training program in anesthesiology recognized by the American Council on Graduate Medicine.

(c) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2000, deletes or extends that date.

SEC. 5. Section 2245 is added to the Business and Professions Code, to read:

2245. (a) A violation of any provision of Article 2.7 (commencing with Section 1646) of Chapter 4 of Division 2 or Section 1682 by a physician and surgeon who possesses a permit issued by the Board of Dental Examiners of California to administer general anesthesia in a dental office may constitute unprofessional conduct.

(b) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2000, deletes or extends that date.

SEC. 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 prevent unnecessary injury or death caused by a lack of training or misuse of general anesthesia in a dental office, it is necessary that this act take effect immediately.

CHAPTER 506

An act to amend Sections 25123.5 and 25150.6 of, and to add Sections 25143.14 and 25200.3.1 to, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 15, 1998. Filed with Secretary of State September 15, 1998.]

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

SECTION 1. Section 25123.5 of the Health and Safety Code is amended to read:

25123.5. (a) Except as provided in subdivision (b), "treatment" means any method, technique, or process which is not otherwise excluded from the definition of treatment by this chapter and which is designed to change the physical, chemical, or biological character or composition of any hazardous waste or any material contained therein, or which removes or reduces its harmful properties or characteristics for any purpose.

(b) (1) "Treatment" does not include any of the activities listed in paragraph (2), if one of the following requirements is met:

(A) The activity is conducted onsite in accordance with the requirements of this chapter and the department's regulations adopted pursuant to this chapter governing the generation and accumulation of hazardous waste.

(B) The activity is conducted in accordance with the conditions specified in a permit issued by the department for the storage of hazardous waste.

(2) The activities subject to the exemption specified in paragraph (1) include all of the following:

(A) Sieving or filtering liquid hazardous waste to remove solid fractions, without added heat, chemicals, or pressure, as the waste is added to or removed from a storage or accumulation tank or container. For purposes of this subparagraph, sieving or filtering does not include adsorption, reverse osmosis, or ultrafiltration.

(B) Phase separation of hazardous waste during storage or accumulation in tanks or containers, if the separation is unaided by the addition of heat or chemicals. If the phase separation occurs at a commercial offsite permitted storage facility, all phases of the hazardous waste shall be managed as hazardous waste after separation.

(C) Combining two or more waste streams that are not incompatible into a single tank or container if both of the following conditions apply:

(i) The waste streams are being combined solely for the purpose of consolidated accumulation or storage or consolidated offsite shipment, and they are not being combined to meet a fuel specification or to otherwise be chemically or physically prepared to be treated, burned for energy value, or incinerated.

(ii) The combined waste stream is managed in compliance with the most stringent of the regulatory requirements applicable to each individual waste stream.

(D) Evaporation of water from hazardous wastes in tanks or containers, such as breathing and evaporation through vents and floating roofs, without the addition of pressure, chemicals, or heat other than sunlight or ambient room lighting or heating.

(3) This subdivision does not apply to any activity for which a hazardous waste facilities permit for treatment is required under the federal act.

SEC. 2. Section 25143.14 is added to the Health and Safety Code, to read:

25143.14. (a) Except as otherwise provided in subdivisions (c) and (d), residues that are removed from equipment for the purpose of cleaning the equipment for continued use are subject to regulation under this chapter only after the residues have been removed from the equipment.

(b) Except as otherwise provided in subdivisions (c) and (d), the act of removing residues from equipment for the purpose of cleaning the equipment for continued use constitutes generation, and not treatment, of a hazardous waste.

(c) Subdivisions (a) and (b) only apply to equipment that is not being used to manage hazardous waste.

(d) Residues that are not hazardous waste, as defined in Section 25117, including residues that are not discarded materials pursuant to subdivision (c) of Section 25124, are not subject to regulation under this chapter.

SEC. 3. Section 25150.6 of the Health and Safety Code is amended to read:

25150.6. (a) Except as provided in subdivision (e), the department may, by regulation, exempt a hazardous waste management activity from one or more of the requirements of this chapter, if the department does all of the following:

(1) Prepares the analysis of the hazardous waste management activity to which the exemption will apply, as required by subdivision (b).

(2) Demonstrates that one of the conclusions required by subdivision (c) is valid.

(3) Imposes, as may be necessary, conditions and limitations on the exemption that ensure that the exempted activity will not pose a significant potential hazard to human health or safety or to the environment.

(b) Before the department adopts a regulation exempting a hazardous waste activity from one or more of the requirements of this chapter pursuant to subdivision (a), the department shall evaluate the activity and prepare an analysis that addresses all of the following aspects of the activity, to the extent that the requirement or requirements from which the activity will be exempted can affect these aspects of the activity:

(1) The types of hazardous waste streams and the estimated amounts of hazardous waste that are managed as part of the activity and the hazards to human health or safety or to the environment posed by reasonably foreseeable mismanagement of those hazardous wastes and their hazardous constituents. The estimate of the amounts of hazardous waste that are managed as part of the activity shall be based upon information reasonably available to the department.

(2) The complexity of the activity, and the amount and complexity of operator training, equipment installation and maintenance, and monitoring that are required to ensure that the activity is conducted in a manner that safely and effectively manages the particular hazardous waste stream.

(3) The chemical or physical hazards that are associated with the activity and the degree to which those hazards are similar to, or differ from, the chemical or physical hazards that are associated with the

production processes that are carried out in the facilities that produce the hazardous waste that is managed as part of the activity.

(4) The types of accidents that might reasonably be foreseen to occur during the management of particular types of hazardous waste streams as part of the activity, the likely consequences of those accidents, and the actual reasonably available accident history associated with the activity.

(5) The types of locations at which the activity may be carried out, an estimate of the number of these locations, and the types of hazards that may be posed by proximity to the land uses described in subdivision (b) of Section 25232. The estimate of the number of locations at which the activity may be carried out shall be based upon information reasonably available to the department.

(c) The department shall not adopt a regulation pursuant to subdivision (a) unless it first demonstrates, using the information developed in the analysis prepared pursuant to subdivision (b), that one of the following is valid:

(1) The requirement from which the activity is exempted is not significant or important in either of the following:

(A) Preventing or mitigating potential hazards to human health or safety or to the environment posed by the activity.

(B) Ensuring that the activity is conducted in compliance with other applicable requirements of this chapter and the regulations adopted pursuant to this chapter.

(2) A requirement is imposed and enforced by another public agency that provides protection of human health and safety and the environment that is as effective as, and equivalent to, the protection provided by the requirement, or requirements, from which the activity is being exempted.

(3) Conditions or limitations imposed on the exemption will provide protection of human health and safety and the environment equivalent to the requirement, or requirements, from which the activity is exempted.

(4) Conditions or limitations imposed on the exemption accomplish the same regulatory purpose as the requirement, or requirements, from which the activity is being exempted but at less cost or greater administrative convenience and without increasing potential risks to human health or safety or to the environment.

(d) A regulation adopted pursuant to this section shall not be deemed to meet the standard of necessity, pursuant to Section 11349.1 of the Government Code, unless the department has complied with subdivisions (b) and (c).

(e) The department shall not exempt a hazardous waste management activity from a requirement of this chapter or the regulations adopted by the department if the requirement is also a requirement for that activity under the federal act.

(f) The department shall not adopt regulations pursuant to this section to exclude a hazardous waste management activity from the definition of treatment set forth in Section 25123.5.

(g) The authority of the department to adopt regulations pursuant to this section shall remain in effect only until January 1, 2002, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date. This subdivision shall not be construed to invalidate any regulation adopted pursuant to this section prior to the expiration of the department's authority.

SEC. 4. Section 25200.3.1 is added to the Health and Safety Code, to read:

25200.3.1. (a) For purposes of this section, the following definitions apply:

(1) "Laboratory" means a workplace where relatively small quantities of hazardous chemicals are handled or used in a manner that meets all of the following criteria:

(A) Chemical reactions, transfers, and handling are carried out using containers that are designed to be easily and safely manipulated by one person.

(B) Protective laboratory practices and equipment are available and in common use to minimize the potential for laboratory worker exposure to hazardous chemicals.

(C) The chemical procedures conducted in the laboratory meet all of the following criteria:

(i) The chemical procedures are conducted for purposes of education, research, chemical analysis, clinical testing, or product development, testing, or quality control.

(ii) The chemical procedures are not part of the actual commercial production of chemicals or other products, and are not part of production development activities, unless the activities are conducted on the scale of a research laboratory.

(iii) The chemical procedures are not part of the treatment of hazardous waste, other than the treatment of laboratory hazardous waste pursuant to subdivision (c).

(2) "Laboratory accumulation area" means the area where laboratory hazardous wastes are accumulated pursuant to subdivision (b). The laboratory accumulation area may be located in the room in which the accumulated laboratory hazardous wastes are generated or in another onsite location.

(3) "Laboratory hazardous waste" means hazardous waste generated in a laboratory by chemical procedures meeting the criteria specified in subparagraph (C) of paragraph (1).

(b) Notwithstanding paragraph (1) of subdivision (d) of Section 25123.3, and except as otherwise required by the federal act, up to 55 gallons of laboratory hazardous waste, or one quart of laboratory hazardous waste that is acutely hazardous waste, may be accumulated onsite in a laboratory accumulation area that is located

as close as is practical to the location where the laboratory hazardous waste is generated, if all of the following conditions are met:

(1) The laboratory accumulation area is managed under the control of one or more designated personnel who have received training commensurate with their responsibilities and authority for managing laboratory hazardous wastes, and unsupervised access to the laboratory accumulation area is limited to personnel who have received training commensurate with their responsibilities and authority for managing laboratory hazardous wastes.

(2) The laboratory hazardous wastes are managed so as to ensure that incompatible laboratory hazardous wastes are not mixed, and are otherwise prevented from coming in contact with each other. However, incompatible laboratory hazardous wastes may be mixed together during treatment meeting the requirements of subdivision (c), if one laboratory hazardous waste is being used to treat another laboratory hazardous waste pursuant to procedures identified in paragraph (1) of subdivision (c).

(3) The amount of laboratory hazardous wastes accumulated in the laboratory accumulation area is appropriate for the space limitations and the need to safely manage the containers and separate incompatible laboratory hazardous wastes.

(4) All of the requirements of subdivision (d) of Section 25123.3 are met, except for the requirements of paragraph (1) of subdivision (d) of Section 25123.3.

(c) Notwithstanding any other provision of law, and except as otherwise required by the federal act, a hazardous waste facilities permit or other grant of authorization from the department is not required for treatment of laboratory hazardous waste generated onsite, if all of the following requirements are met:

(1) The laboratory hazardous waste is treated in containers using recommended procedures and quantities for treatment of laboratory wastes published by the National Research Council or procedures for treatment of laboratory wastes published in peer-reviewed scientific journals.

(2) The laboratory hazardous waste is treated at a location that is as close as is practical to the location where the laboratory hazardous waste is generated, and the treatment is conducted within 10 calendar days after the date the laboratory hazardous waste is generated.

(3) The amount of laboratory hazardous waste treated in a single batch does not exceed the quantity limitation specified in subparagraph (A) or (B), whichever is the smaller quantity:

(A) Five gallons or 18 kilograms, whichever is greater.

(B) (i) Except as otherwise provided in clause (ii), the quantity limit recommended in the procedures published by the National Research Council or in other peer-reviewed scientific journals for the treatment procedure being used.

(ii) Except as otherwise specified in subparagraph (A), the amount of laboratory hazardous waste treated in a single batch may exceed the quantity limit specified in clause (i) if a qualified chemist has demonstrated that the larger quantity can be safely treated, and documentation of the demonstration is maintained onsite. The documentation shall be made available for inspection upon request by a representative of the department or the CUPA, or if there is no CUPA, the agency authorized pursuant to subdivision (f) of Section 25404.3.

(4) The laboratory hazardous waste treated is from a single procedure, or set of procedures that are part of the same laboratory process.

(5) The person performing the treatment has knowledge of the laboratory hazardous waste being treated, including knowledge of the procedure that generated the laboratory hazardous waste, and has received hazardous waste training, including how to conduct the treatment, manage treatment residuals, and respond effectively to emergency situations.

(6) Training records for all persons performing treatment of laboratory hazardous wastes pursuant to this subdivision are maintained for a minimum of three years.

(7) The laboratory hazardous waste is managed in accordance with applicable requirements for generators accumulating laboratory hazardous waste under this chapter and the regulations adopted by the department, and all treatment residuals and effluents are managed in accordance with applicable federal, state and local requirements.

(8) All records maintained by the laboratory pertaining to treatment conducted pursuant to this subdivision are made available for inspection upon request by a representative of the department or the CUPA, or if there is no CUPA, the agency authorized pursuant to subdivision (f) of Section 25404.3.

(d) For laboratory hazardous wastes that contain radioactive material, the requirements of this section apply in addition to, but do not supercede, applicable federal and state requirements governing the management of radioactive materials.

(e) The department may adopt regulations that specify additional requirements for accumulating laboratory hazardous wastes pursuant to subdivision (b) or treating laboratory hazardous wastes pursuant to subdivision (c), if the department determines these additional requirements are necessary for protection of public health and the environment.

SEC. 5. Notwithstanding Section 7550.5 of the Government Code, on or before January 1, 2002, the Department of Toxic Substances Control shall submit a report to the Legislature that evaluates the effect of Section 25200.3.1 of the Health and Safety Code, as added by this act, on the hazardous waste management activities of laboratories and, in particular, determine if the increase

in the maximum amount of extremely hazardous waste from 1 quart to 55 gallons that may be accumulated by laboratories pursuant to subdivision (b) of that section has resulted in increased risks to human health or safety or the environment.

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

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

CHAPTER 507

An act to amend Sections 10170.5, 10177, and 10226 of the Business and Professions Code, relating to real estate licenses.

[Approved by Governor September 15, 1998. Filed with Secretary of State September 15, 1998.]

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

SECTION 1. Section 10170.5 of the Business and Professions Code is amended to read:

10170.5. (a) Except as otherwise provided in Sections 10153.4 and 10170.8, no real estate license shall be renewed unless the commissioner finds that the applicant for license renewal has, during the four-year period preceding the renewal application, successfully completed the 45 clock hours of education provided for in Section 10170.4, including all of the following:

(1) A three-hour course in ethics, professional conduct, and legal aspects of real estate, which shall include, but not be limited to, relevant legislation, regulations, articles, reports, studies, court decisions, treatises, and information of current interest.

(2) A three-hour course in agency relationships and duties in a real estate brokerage practice, including instruction in the disclosures to be made and the confidences to be kept in the various agency relationships between licensees and the parties to real estate transactions.

(3) A three-hour course in trust fund accounting and handling.

(4) A three-hour course in fair housing.

(5) Not less than 18 clock hours of courses or programs related to consumer protection, and designated by the commissioner as satisfying this purpose in his or her approval of the offering of these courses or programs, which shall include, but not be limited to, forms of real estate financing relevant to serving consumers in the marketplace; land use regulation and control; pertinent consumer disclosures; agency relationships; capital formation for real estate development; fair practices in real estate; appraisal and valuation techniques; landlord-tenant relationships; energy conservation; environmental regulation and consideration; taxation as it relates to consumer decisions in real estate transactions; probate and similar disposition of real property; governmental programs such as revenue bond activities, redevelopment, and related programs; business opportunities; and mineral, oil, and gas conveyancing.

(6) Other courses and programs that will enable a licensee to achieve a high level of competence in serving the objectives of consumers who may engage the services of licensees to secure the transfer, financing, or similar objectives with respect to real property, including organizational and management techniques that will significantly contribute to this goal.

(b) Except as otherwise provided in Section 10170.8, no real estate license shall be renewed for a licensee who already has renewed under subdivision (a), unless the commissioner finds that the applicant for license renewal has, during the four-year period preceding the renewal application, successfully completed the 45 clock hours of education provided for in Section 10170.4, including a six-hour update survey course that covers the subject areas specified in paragraphs (1) to (4), inclusive, of subdivision (a).

(c) Any denial of a license pursuant to this section shall be subject to Section 10100.

SEC. 2. Section 10177 of the Business and Professions Code is amended to read:

10177. The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

(a) Procured, or attempted to procure, a real estate license or license renewal, for himself or herself or any salesperson, by fraud, misrepresentation or deceit, or by making any material misstatement of fact in an application for a real estate license, license renewal or reinstatement.

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime involving moral turpitude, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order

granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

(c) Knowingly authorized, directed, connived at, or aided in, the publication, advertisement, distribution, or circulation of any material false statement or representation concerning his or her business, or any business opportunity or any land or subdivision (as defined in Chapter 1 (commencing with Section 11000) of Part 2) offered for sale.

(d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2.

(e) Willfully used the term "realtor" or any trade name or insignia of membership in any real estate organization of which the licensee is not a member.

(f) Acted or conducted himself or herself in a manner which would have warranted the denial of his or her application for a real estate license, or has either had a license denied or a license issued by another agency of this state, another state, or the federal government, revoked or suspended for acts which if done by a real estate licensee would be grounds for the suspension or revocation of a California real estate license, if the action of denial, revocation, or suspension by the other agency or entity was taken only after giving the licensee or applicant fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and only upon an express finding of a violation of law by the agency or entity.

(g) Demonstrated negligence or incompetence in performing any act for which he or she is required to hold a license.

(h) As a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.

(i) Has used his or her employment by a governmental agency in a capacity giving access to records, other than public records, in a manner that violates the confidential nature of the records.

(j) Engaged in any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

(k) Violated any of the terms, conditions, restrictions, and limitations contained in any order granting a restricted license.

(*l*) Solicited or induced the sale, lease, or the listing for sale or lease, of residential property on the ground, wholly or in part, of loss of value, increase in crime, or decline of the quality of the schools, due to the present or prospective entry into the neighborhood of a person or persons of another race, color, religion, ancestry, or national origin.

(m) Violated the Franchise Investment Law (Division 5 (commencing with Section 31000) of Title 4 of the Corporations Code) or regulations of the Commissioner of Corporations pertaining thereto.

(n) Violated the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code or the regulations of the Commissioner of Corporations pertaining thereto.

(o) Failed to disclose to the buyer of real property in a transaction in which the licensee is an agent for the buyer, the nature and extent of a licensee's direct or indirect ownership interest in that real property. The direct or indirect ownership in the property by a person related to the licensee by blood or marriage, by an entity in which the licensee has an ownership interest, or by any other person with whom the licensee occupies a special relationship shall be disclosed to the buyer.

If a real estate broker that is a corporation has not done any of the foregoing acts, either directly or through its employees, agents, officers, directors, or persons owning or controlling 10 percent or more of the corporation's stock, the commissioner may not deny the issuance of a real estate license to, or suspend or revoke the real estate license of, the corporation, provided that any offending officer, director, or stockholder, who has done any of the foregoing acts individually and not on behalf of the corporation, has been completely disassociated from any affiliation or ownership in the corporation.

SEC. 3. Section 10226 of the Business and Professions Code is amended to read:

10226. (a) The commissioner may periodically by regulation prescribe fees lower than the maximum fees provided in Sections 10209.5, 10210, 10214.5, 10215, and 10250.3 whenever he or she determines those lower fees are sufficient to offset the costs and expenses incurred in the administration of Part 1 (commencing with Section 10000) of this division. The commissioner shall hold at least one regulation hearing each calendar year, to determine if lower fees should be prescribed.

(b) If, as of June 30 of any fiscal year, the balance of funds in the Real Estate Fund exceeds an amount equal to 50 percent of the department's authorized budget for the following year, then within 30 days thereafter the commissioner shall, notwithstanding the Administrative Procedure Act (Chapter 3.5 (commencing with

Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), issue regulations reducing real estate license and subdivision fees so that as of June 30 of the next fiscal year the balance of funds in the Real Estate Fund shall not exceed an amount equal to 50 percent of the department's authorized budget for that year.

(c) If the commissioner fails to reduce these fees within the timeframe specified in subdivision (b), then fees shall automatically be reduced to the levels as indicated in subdivision (b) of Section 10226.5. That reduction shall be effective no later than September 1 of the fiscal year wherein the commissioner is obliged to issue regulations pursuant to subdivision (b).

CHAPTER 508

An act to amend Section 89426 of the Education Code, relating to the Preservation of Jazz Institute.

[Approved by Governor September 15, 1998. Filed with Secretary of State September 15, 1998.]

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

SECTION 1. Section 89426 of the Education Code is amended to read:

89426. This chapter shall become inoperative on July 1, 2002, and, as of January 1, 2003, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2003, deletes or extends the dates on which it becomes inoperative and is repealed.

CHAPTER 509

An act to amend Sections 18986.40 and 18986.46 of the Welfare and Institutions Code, relating to human services.

[Approved by Governor September 15, 1998. Filed with Secretary of State September 15, 1998.]

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

SECTION 1. Section 18986.40 of the Welfare and Institutions Code is amended to read:

18986.40. (a) For the purposes of this chapter, "program" or "integrated children's services programs" means a coordinated children's service system, operating as a program that is part of a department or State Department of Mental Health initiative, that

offers a full range of integrated behavioral social, health, and mental health services, including applicable educational services, to seriously emotionally disturbed and special needs children, or programs established by county governments, local education agencies, or consortia of public and private agencies, to jointly provide two or more of the following services to children or their families, or both:

(1) Educational services for children at risk of dropping out, or who need additional educational services to be successful academically.

(2) Health care.

(3) All mental health diagnostic and treatment services, including medication.

(4) Substance abuse prevention and treatment.

(5) Child abuse prevention, identification, and treatment.

(6) Nutrition services.

(7) Child care and development services.

(8) Juvenile justice services.

(9) Child welfare services.

(10) Early intervention and prevention services.

(11) Crisis intervention services, as defined in subdivision (c).

(12) Any other service which will enhance the health, development, and well-being of children and their families.

(b) For the purposes of this chapter, "children's multidisciplinary services team" means a team of two or more persons trained and qualified to provide one or more of the services listed in subdivision (a), who are responsible in the program for identifying the educational, health, or social service needs of a child and his or her family, and for developing a plan to address those needs. A family member, or the designee of a family member, shall be invited to participate in team meetings and decisions, unless the team determines that, in its professional judgment, this participation would present a reasonable risk of a significant adverse or detrimental effect on the minor's psychological or physical safety. Members of the team shall be trained in the confidentiality and information sharing provisions of this chapter.

(c) "Crisis intervention services" means early support and psychological assistance, to be continued as necessary, to children who have been victims of, or whose lives have been affected by, a violent crime or a cataclysmic incident, such as a natural disaster, or who have been involved in school, neighborhood, or family based critical incidents likely to cause profound psychological effects if not addressed immediately and thoroughly.

SEC. 2. Section 18986.46 of the Welfare and Institutions Code is amended to read:

18986.46. (a) A program shall utilize children's multidisciplinary services teams, as defined in this chapter.

(b) A team member shall provide program services only as employed by, under contract with, or otherwise affiliated with, the program, and shall not share information, or provide program services, when acting as a separate local, state, or private agency or entity.

(c) A program shall be considered a single program for purposes of federal substance abuse program regulations contained in Part 2 (commencing with Section 2.1) of Title 42 of the Code of Federal Regulations.

(d) Notwithstanding any other provision of law regarding disclosure of information and records, a program shall be permitted to establish a unified services record for a child and family. That record shall contain all records of prior services that are released to the program and that are relevant and necessary to formulate an integrated services plan, pursuant to valid written authorizations, as well as a record of all service provided under the program.

(e) Notwithstanding any other provision of law regarding disclosure of information and records, when a child enters the program a parent, guardian, judicial office with jurisdiction over the minor, or a minor with legal power to consent, shall be asked to sign a single authorization that gives a knowing and informed consent, in writing, and that complies with all other applicable provisions of state law governing release of medical, mental health, social service, and educational records, and that covers multiple service providers, in order to permit the release of records to the program. This single authorization shall not include adoption records. The authorized representative of the child, or the child in a case where he or she has the legal right to consent, shall be fully apprised of the requirements of this subdivision prior to participation in the program. Before information may be exchanged about a particular child or family pursuant to this chapter, a representative of the program shall do all of the following:

(1) Explain to the authorized representative of the child, or the child in a case where he or she has the legal right to consent, both of the following, and this explanation shall be given before any information about the child or family is recorded and before any services are provided:

(A) Information provided by the child or family may only be exchanged within the program with the express written consent of the authorized representative.

(B) Information shall not be disclosed to anyone other than members of the multidisciplinary children's services team, and those qualified to receive information as explained in subdivision (i).

(2) The authorized representative of the child, or the child in a case where he or she has the legal right to consent, shall be informed that he or she has a right to refuse to sign, or to limit the scope of, the consent form, and that a refusal to sign, or to limit the scope of, the

consent form will not have an adverse impact on the client's eligibility for services under the programs described in this chapter.

(f) The knowing and informed consent given pursuant to this chapter shall only be in force for the time that the child or family is a client of the program.

(g) (1) Notwithstanding any provision of state law governing the disclosure of information and records, persons who are trained, qualified, and assigned by their respective agencies to serve on teams within a program and other team members included pursuant to this chapter may view relevant sections of unified program records and may disclose to one another relevant information and view records on a child or the child's family as necessary to formulate an integrated services plan or to deliver services to children and their families.

(2) This information and records may include information relevant to the evaluation of the child and his or her family, the development of a treatment plan for the child and his or her family, and the delivery of services. Relevant information and records shall be shared with family members or family designees on the team, except information or records, if any, disclosure of which the team determines would present a reasonable risk of a significant adverse or detrimental effect on the minor's psychological or physical safety.

(h) (1) If the members of a multidisciplinary services team within an integrated children's services program require records held by other team members, copies may be provided to them.

(2) Notwithstanding any other provisions of law regarding disclosure of information and records, a program may establish and maintain a common data base for the purpose of delivering services under the program. The data base may contain demographic data and may identify the services recommended for, and provided to, a child and his or her family by the program. The data base shall be for use and disclosure only within the program, except by properly authorized consent by a parent, guardian, judicial officer with jurisdiction over the child, or a minor with the legal power to consent.

(3) The program may authorize use of information contained in the data base for bona fide evaluation and research purposes, unless otherwise prohibited by law. No information disclosed under this paragraph shall permit identification of the individual patient or client. The release of copies of mental health records, physical health records, and drug or alcohol records in programs establishing a unified services record shall be governed by the single authorization of informed and knowing consent to release these records. In programs not establishing a unified services record and not utilizing the single authorization of informed and knowing consent, release of these records may take place only after the team has received a form permitting release of records on the child or the child's family, signed by the child, to the extent the records were generated as a result of health care services to which the child has the power to consent under state law, or, to the extent that the records have not been

generated by the provision of these health care services, by the child's parent, guardian, or legal representative, including the court which has jurisdiction over those children who are wards or dependents of the court.

(i) The multidisciplinary team may designate persons qualified pursuant to Section 18986.40 to be a member of the team for a particular case. A person designated as a team member pursuant to this subdivision may receive and disclose relevant information and records, subject to the confidentiality provisions of subdivision (k).

(j) The sharing of information permitted under subdivision (g) shall be governed by memoranda of understanding among the participating service providers or agencies in the coordinated children's service system or program. These memoranda shall specify the types of information that may be shared without a signed release form, in accordance with subdivision (e), and the process to be used to ensure that current confidentiality requirements, as described in subdivision (k), are met. This paragraph shall not be construed to waive any right of privilege contained in the Evidence Code, except in compliance with Section 912 of that code.

(k) Every member of the children's multidisciplinary services team who receives information or records on children and families served in the integrated children's services program shall be under the same privacy and confidentiality obligations and subject to the same confidentiality penalties as the person disclosing or providing the information or records. The information or records obtained shall be maintained in a manner that ensures the maximum protection of privacy and confidentiality rights.

(*l*) This section shall not be construed to restrict guarantees of confidentiality provided under federal law.

(m) Information and records communicated or provided to the program, by all providers, programs, and agencies, as well as information and records created by the program in the course of serving its children and their families, shall be deemed private and confidential and shall be protected from discovery and disclosure by all applicable statutory and common law protections. Civil and criminal penalties shall apply to the inappropriate disclosure of information held by the program. Nothing in this section shall be construed to affect the authority of a health care provider to disclose medical information pursuant to paragraph (1) of subdivision (c) of Section 56.10 of the Civil Code.

CHAPTER 510

An act to add Chapter 3 (commencing with Section 16000) to Division 5 of the Insurance Code, relating to property insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 15, 1998. Filed with Secretary of State September 15, 1998.]

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

SECTION 1. Chapter 3 (commencing with Section 16000) is added to Division 5 of the Insurance Code, to read:

CHAPTER 3. EMERGENCY DISASTER ASSESSMENT

Article 1. General Provisions

16000. As used in this chapter, "state of emergency" means a state of emergency or local emergency as defined in Section 8558 of the Government Code.

16001. This chapter shall apply to all insurers insuring real or personal property in the state, and any other classes of insurers that the commissioner determines should participate in emergency disaster preparation and assistance under this chapter.

16002. The purpose and function of the disaster assessment teams is solely to determine the staffing and support needs of insurers in handling anticipated claims.

Article 2. Emergency Disaster Assessment

16010. In order to ensure an adequate response to disasters, the Legislature finds it necessary and appropriate to establish insurance disaster assessment teams.

16010.5. The commissioner shall establish insurance disaster assessment teams in accordance with the provisions of this chapter.

16011. (a) Each team shall consist of not more than seven insurance representatives. Insurers doing business in this state that want to participate in the insurance disaster assessment teams shall submit the names of qualified representatives to the commissioner.

(b) The commissioner may establish one or more insurance disaster assessment teams, and may provide for different teams for different locations and different types of disasters.

(c) The commissioner may assign a representative of the commissioner to accompany the team or teams. The representative shall complete the appropriate Standardized Emergency Management Systems training.

16012. Upon the occurrence of any state of emergency involving property damage, the commissioner may require any insurance disaster assessment team to assemble for the purpose of assessing the extent, type, and degree of insured damage involved in the emergency.

16013. State and local law enforcement officials shall permit an insurance disaster assessment team to have access to any disaster area

as soon as determined safe and practical by the incident commander. The commissioner shall be responsible for the coordination and dispatch of insurance disaster assessment teams to disaster areas.

16014. The insurance disaster assessment team may use any of the following techniques to assess the amount of damage:

(a) Ground surveying on foot or vehicle, or aerial surveying if necessary.

(b) Analysis of data provided by others.

16015. The insurance disaster assessment team shall make a general assessment of the amount and types of damage suffered in an attempt to identify the overall scope of damage.

16016. The insurance disaster assessment team shall compile its findings into a report and submit the report to the commissioner as soon as practical, but not more than five days after completion of the assessment unless authorized by the commissioner. The report shall be developed, in accordance with procedures established by the commissioner. The information shall be disseminated publicly, and shall be made available to local and state disaster organizations, and to the commissioner for distribution to insurers. These findings and information shall not be binding on any insured as to coverage.

Article 3. Adjuster Identification

16020. The commissioner, in consultation with the Office of Emergency Services and other emergency service agencies, shall establish a method for identification of representatives of insurers.

16021. (a) In accordance with the methods established under Section 16020, the commissioner shall issue identification badges to each insurer insuring property in the state. The insurer shall be responsible for the distribution of the identification badges to appropriate insurer representatives. The identification badges shall permit access to disaster areas as soon as determined safe and practical by the incident commander.

(b) The purpose of the identification badges is to enable the incident commander and state and local law enforcement officials to identify the representatives of insurers for purposes of access to disaster areas, and the badges shall not be used as identification for other purposes. The badges shall include in bold lettering larger than the other identifying information a statement that the bearer is not a state employee or public official, and does not possess any governmental authority.

16022. The commissioner shall distribute identification badges to insurance adjusters for the purpose of identifying persons who should be given access to disaster areas. Every insurer shall maintain a list of adjusters that have been assigned to work in the disaster area.

Article 4. Coordination of Emergency Operations

16030. (a) The commissioner, in cooperation with insurers, the Office of Emergency Services, and other emergency service agencies, shall establish procedures for the coordination of efforts between insurers and their representatives and those of emergency response agencies.

(b) The commissioner shall assign a representative of the commissioner to work within the state's regional emergency operations centers. The representative shall complete the appropriate Standardized Emergency Management Systems training.

(c) All insurance disaster assessment team members shall complete the appropriate Standardized Emergency Management Systems training.

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 permit insurer coordination of emergency efforts with respect to recent flood disasters, it is necessary that this act take effect immediately.

CHAPTER 511

An act to amend Sections 240, 4921, and 6327 of, and to add Sections 4977, 4978, and 6322.5 to, the Family Code, relating to domestic violence.

[Approved by Governor September 15, 1998. Filed with Secretary of State September 15, 1998.]

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

SECTION 1. Section 240 of the Family Code is amended to read:

240. This part applies where a temporary restraining order, including a protective order as defined in Section 6218, is issued under any of the following provisions:

(a) Article 2 (commencing with Section 2045) of Chapter 4 of Part 1 of Division 6 (dissolution of marriage, nullity of marriage, or legal separation of the parties).

(b) Article 3 (commencing with Section 4620) of Chapter 3 of Part 5 of Division 9 (deposit of assets to secure future child support payments).

(c) Article 1 (commencing with Section 6320) of Chapter 2 of Part 4 of Division 10 (Domestic Violence Prevention Act), other than an order under Section 6322.5.

(d) Article 2 (commencing with Section 7710) of Chapter 6 of Part 3 of Division 12 (Uniform Parentage Act).

SEC. 2. Section 4921 of the Family Code is amended to read:

4921. (a) A support enforcement agency of this state, upon request, shall provide services to a petitioner in a proceeding under this chapter.

(b) A support enforcement agency that is providing services to the petitioner as appropriate shall do all of the following:

(1) Take all steps necessary to enable an appropriate tribunal in this state or another state to obtain jurisdiction over the respondent.

(2) Request an appropriate tribunal to set a date, time, and place for a hearing.

(3) Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties.

(4) Within 14 days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written notice from an initiating, responding, or registering tribunal, send a copy of the notice to the petitioner.

(5) Within 14 days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written communication from the respondent or the respondent's attorney, send a copy of the communication to the petitioner.

(6) Notify the petitioner if jurisdiction over the respondent cannot be obtained.

(7) Perform the acts required by Section 4978.

(c) This chapter does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

SEC. 3. Section 4977 is added to the Family Code, to read:

4977. (a) The order described in Section 4926 shall be issued upon application of a child, parent, guardian or other caretaker of a child, or party, signed under penalty of perjury, setting forth facts that demonstrate, to the satisfaction of the court, that the health, safety, freedom of movement, or physical or emotional well-being of the applicant or the applicant's child may be put unreasonably at risk by the disclosure of the applicant's address or other identifying information.

(b) A copy of the order issued pursuant to this section shall be served on the other party to the proceeding and the district attorney by first-class mail. The order shall include a mailing address for service of process on the protected party. The protected party shall be required to file with the court notice of any change of the mailing address and a copy of the notice shall be sent to the other party to the proceeding and the district attorney. This designated address shall not be the address of a governmental agency unless the agency has consented in writing to the designation.

(c) Notwithstanding any local or state rules of court, no notice is required prior to issuance of an order pursuant to this section.

(d) An order issued pursuant to this section shall not expire until further order of the court, issued after a hearing on a noticed motion filed by the other party to the proceeding and served by first-class mail on the protected party, at the mailing address described in subdivision (b), and the district attorney.

(e) Part 4 (commencing with Section 240) of Division 2 shall not apply to the issuance of an order pursuant to this section.

(f) The Judicial Council shall adopt forms and notices to implement this section, that shall be available no later than July 1, 1999.

(g) Nothing in this section shall be construed to require a party to obtain an order pursuant to this section before using a confidential address on court pleadings except as required by Section 4925.

SEC. 4. Section 4978 is added to the Family Code, to read:

4978. A support enforcement agency that is providing services to a petitioner pursuant to Section 4921 shall do all of the following:

(a) Inform the petitioner of the requirement that the pleadings contain identifying information about the petitioner and the child, including the residential address, unless an order of nondisclosure is granted pursuant to Sections 4926 and 4977.

(b) Inform the petitioner of his or her right to seek an order of nondisclosure and provide information regarding how that order may be obtained.

(c) Inform the petitioner that the support enforcement agency shall seek an order of nondisclosure on behalf of the petitioner if the petitioner has previously obtained a protective or restraining order or has been granted a good cause exception from cooperation requirements pursuant to Section 11477.04 of the Welfare and Institutions Code; and instruct the petitioner to notify the agency of any such order or exception.

(d) Seek an order of nondisclosure pursuant to Sections 4926 and 4977 if the petitioner informs the agency that he or she has obtained a protective or restraining order or has been granted a good cause exception from cooperation requirements pursuant to Section 11477.04 of the Welfare and Institutions Code.

SEC. 5. Section 6322.5 is added to the Family Code, to read:

6322.5. Pursuant to Sections 4926 and 4977, the court may issue an ex parte order prohibiting disclosure of the address or other identifying information of a party, child, parent, guardian or other caretaker of a child.

SEC. 6. Section 6327 of the Family Code is amended to read:

6327. Part 4 (commencing with Section 240) of Division 2 applies to the issuance of any ex parte order under this article, other than an order under Section 6322.5.

SEC. 7. 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 512

An act to add Section 96.5 to the Penal Code, relating to obstruction of justice.

[Approved by Governor September 15, 1998. Filed with Secretary of State September 15, 1998.]

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

SECTION 1. Section 96.5 is added to the Penal Code to read:

96.5. (a) Every judicial officer, court commissioner, or referee who commits any act that he or she knows, or should have known, perverts or obstructs justice or the due administration of the laws, is guilty of a public offense punishable by imprisonment in a county jail for not more than one year.

(b) Nothing in this section prohibits prosecution under paragraph (5) of subdivision (a) of Section 182 of the Penal Code or any other law.

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 513

An act to add Article 2.85 (commencing with Section 1647.10) to Chapter 4 of Division 2 of the Business and Professions Code, relating to oral conscious sedation.

[Approved by Governor September 15, 1998. Filed with Secretary of State September 15, 1998.]

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

SECTION 1. Article 2.85 (commencing with Section 1647.10) is added to Chapter 4 of Division 2 of the Business and Professions Code, to read:

Article 2.85. Use of Oral Conscious Sedation for Pediatric Patients

1647.10. As used in this article:

(a) "Oral conscious sedation" means a minimally depressed level of consciousness produced by oral medication that retains the patient's ability to maintain independently and continuously an airway, and respond appropriately to physical stimulation and verbal command.

(b) "Minor patient" means a dental patient under the age of 13 years.

(c) "Certification" means the issuance of a certificate to a dentist licensed by the board who provides the board with his or her name, and the location where the administration of oral conscious sedation will occur, and fulfills the requirements specified in Sections 1647.12 and 1647.13.

1647.11. (a) Notwithstanding subdivision (a) of Section 1647.1, after December 31, 1999, no dentist shall administer oral conscious sedation on an outpatient basis to a minor patient unless one of the following conditions is met:

(1) The dentist possesses a current license in good standing to practice dentistry in California and either holds a valid general anesthesia permit, conscious sedation permit, or has been certified by the board, pursuant to Section 1647.12, to administer oral sedation to minor patients.

(2) The dentist possesses a current permit issued under Section 1638 or 1640 and either holds a valid general anesthesia permit or conscious sedation permit or possesses a certificate as a provider of

oral conscious sedation to minor patients in compliance with, and pursuant to, this article.

(b) Certification as a provider of oral conscious sedation to minor patients expires at the same time the license or permit of the dentist expires unless renewed at the same time the dentist's license or permit is renewed after its issuance, unless certification is renewed as provided in this article.

(c) This article shall not apply to the administration of local anesthesia or a mixture of nitrous oxide and oxygen, or to the administration, dispensing, or prescription of postoperative medications.

1647.12. (a) A dentist who desires to administer, or order the administration of, oral conscious sedation for minor patients, who does not hold a general anesthesia permit as provided in Sections 1646.1 and 1646.2 or a conscious sedation permit as provided in Sections 1647.2 and 1647.3, shall register his or her name with the board on a board-prescribed registration form. The dentist shall submit the registration fee and evidence showing that he or she satisfies any of the following requirements:

(1) Satisfactory completion of a postgraduate program in oral and maxillofacial surgery, pediatric dentistry, or periodontics at a dental school approved by either the Commission on Dental Accreditation or a comparable organization approved by the board.

(2) Satisfactory completion of a general practice residency or other advanced education in a general dentistry program approved by the board.

(3) Satisfactory completion of a board-approved educational program on oral medications and sedation.

(4) For an applicant who has been using oral conscious sedation in connection with the treatment of minor patients, submission of documentation as required by the board of 10 cases of oral conscious sedation satisfactorily performed by the applicant on minor patients in any three-year period ending no later than August 31, 1998.

1647.13. A certificate holder shall be required to complete a minimum of 7 hours of approved courses of study related to oral conscious sedation of minor patients as a condition of certification renewal as an oral conscious sedation provider. Those courses of study shall be accredited toward any continuing education required by the board pursuant to Section 1645.

1647.14. (a) A physical evaluation and medical history shall be taken before the administration of, oral conscious sedation to a minor. Any dentist who administers, or orders the administration of, oral conscious sedation to a minor shall maintain records of the physical evaluation, medical history, and oral conscious sedation procedures used as required by the board regulations.

(b) A dentist who administers, or who orders the administration of, oral sedation for a minor patient shall be physically present in the

treatment facility while the patient is sedated and shall be present until discharge of the patient from the facility.

(c) The drugs and techniques used in oral conscious sedation to minors shall have a margin of safety wide enough to render unintended loss of consciousness unlikely.

1647.15. The fee for an application for initial certification or renewal under this article shall not exceed the amount necessary to cover administration and enforcement costs incurred by the board in carrying out this article. The listed fee may be prorated based upon the date of the renewal of the dentist's license or permit.

1647.16. Any office in which oral conscious sedation of minor patients is conducted pursuant to this article shall, unless otherwise provided by law, meet the facilities and equipment standards set forth by the board in regulation.

1647.17. A violation of any provision of this article constitutes unprofessional conduct and is grounds for the revocation or suspension of the dentist's permit, certificate, license, or all three, or the dentist may be reprimanded or placed on probation. The proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part I of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

CHAPTER 514

An act to amend Sections 301.5 and 2115 of the Corporations Code, and to amend Section 29 of Chapter 57 of the Statutes of 1996, relating to legal entities.

[Approved by Governor September 15, 1998. Filed with Secretary of State September 15, 1998.]

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

SECTION 1. Section 301.5 of the Corporations Code is amended to read:

301.5. (a) A listed corporation may, by amendment of its articles or bylaws, adopt provisions to divide the board of directors into two or three classes to serve for terms of two or three years respectively, or to eliminate cumulative voting, or both. After the issuance of shares, a corporation which is not a listed corporation may, by amendment of its articles or bylaws, adopt provisions to be effective when the corporation becomes a listed corporation to divide the board of directors into two or three classes to serve for terms of two or three years respectively, or to eliminate cumulative voting, or both. An article or bylaw amendment providing for division of the board of directors into classes, or any change in the number of classes,

or the elimination of cumulative voting may only be adopted by the approval of the board and the outstanding shares (Section 152) voting as a single class, notwithstanding Section 903.

(b) If the board of directors is divided into two classes pursuant to subdivision (a), the authorized number of directors shall be no less than six and one-half of the directors or as close an approximation as possible shall be elected at each annual meeting of shareholders. If the board of directors is divided into three classes, the authorized number of directors shall be no less than nine and one-third of the directors or as close an approximation as possible shall be elected at each annual meeting of shareholders. Directors of a listed corporation may be elected by classes at a meeting of shareholders at which an amendment to the articles or bylaws described in subdivision (a) is approved, but the extended terms for directors are contingent on that approval, and in the case of an amendment to the articles, the filing of any necessary amendment to the articles pursuant to Section 905 or 910.

(c) If directors for more than one class are to be elected by the shareholders at any one meeting of shareholders and the election is by cumulative voting pursuant to Section 708, votes may be cumulated only for directors to be elected within each class.

(d) For purposes of this section, a "listed corporation" means any of the following:

(1) A corporation with outstanding shares listed on the New York Stock Exchange or the American Stock Exchange.

(2) A corporation with outstanding securities designated as qualified for trading as a national market system security on the National Association Quotation System (or any successor national market system).

(e) Subject to subdivision (h), if a listed corporation having a board of directors divided into classes pursuant to subdivision (a) ceases to be a listed corporation for any reason, unless the articles of incorporation or bylaws of the corporation provide for the elimination of classes of directors at an earlier date or dates, the board of directors of the corporation shall cease to be divided into classes as to each class of directors on the date of the expiration of the term of the directors in that class and the term of each director serving at the time the corporation ceases to be a listed corporation (and the term of each director elected to fill a vacancy resulting from the death, resignation, or removal of any of those directors) shall continue until its expiration as if the corporation had not ceased to be a listed corporation.

(f) Subject to subdivision (h), if a listed corporation having a provision in its articles or bylaws eliminating cumulative voting pursuant to subdivision (a) or permitting noncumulative voting in the election of directors pursuant to that subdivision, or both, ceases to be a listed corporation for any reason, the shareholders shall be entitled to cumulate their votes pursuant to Section 708 at any

election of directors occurring while the corporation is not a listed corporation notwithstanding that provision in its articles of incorporation or bylaws.

(g) Subject to subdivision (i), if a corporation that is not a listed corporation adopts amendments to its articles of incorporation or bylaws to divide its board of directors into classes or to eliminate cumulative voting, or both, pursuant to subdivision (a) and then becomes a listed corporation, unless the articles of incorporation or bylaws provide for those provisions to become effective at some other time and, in cases where classes of directors are provided for, identify the directors who, or the directorships that, are to be in each class or the method by which those directors or directorships are to be identified, the provisions shall become effective for the next election of directors after the corporation becomes a listed corporation at which all directors are to be elected.

(h) If a corporation ceases to be a listed corporation on or after the record date for a meeting of shareholders and prior to the conclusion of the meeting, including the conclusion of the meeting after an adjournment or postponement that does not require or result in the setting of a new record date, then, solely for purposes of subdivisions (e) and (f), the corporation shall not be deemed to have ceased to be a listed corporation until the conclusion of the meeting of shareholders.

(i) If a corporation becomes a listed corporation on or after the record date for a meeting of shareholders and prior to the conclusion of the meeting, including the conclusion of the meeting after an adjournment or postponement that does not require or result in the setting of a new record date, then, solely for purposes of subdivision (g), the corporation shall not be deemed to have become a listed corporation until the conclusion of the meeting of shareholders.

(j) If an article amendment referred to in subdivision (a) is adopted by a listed corporation, the certificate of amendment shall include a statement of the facts showing that the corporation is a listed corporation within the meaning of subdivision (d). If an article or bylaw amendment referred to in subdivision (a) is adopted by a corporation which is not a listed corporation, the provision, as adopted, shall include the following statement or the substantial equivalent: "This provision shall become effective only when the corporation becomes a listed corporation within the meaning of Section 301.5 of the Corporations Code."

SEC. 2. Section 2115 of the Corporations Code is amended to read:

2115. (a) A foreign corporation (other than a foreign association or foreign nonprofit corporation but including a foreign parent corporation even though it does not itself transact intrastate business) is subject to the requirements of subdivision (b) if the average of the property factor, the payroll factor, and the sales factor (as defined in Sections 25129, 25132, and 25134 of the Revenue and

Taxation Code) with respect to it is more than 50 percent during its latest full income year and if more than one-half of its outstanding voting securities are held of record by persons having addresses in this state. The property factor, payroll factor, and sales factor shall be those used in computing the portion of its income allocable to this state in its franchise tax return or, with respect to corporations the allocation of whose income is governed by special formulas or that are not required to file separate or any tax returns, which would have been so used if they were governed by this three-factor formula. The determination of these factors with respect to any parent corporation shall be made on a consolidated basis, including in a unitary computation (after elimination of intercompany transactions) the property, payroll, and sales of the parent and all of its subsidiaries in which it owns directly or indirectly more than 50 percent of the outstanding shares entitled to vote for the election of directors, but deducting a percentage of the property, payroll, and sales of any subsidiary equal to the percentage minority ownership, if any, in the subsidiary. For the purpose of this subdivision, any securities held to the knowledge of the issuer in the names of broker-dealers, nominees for broker-dealers (including clearing corporations), or banks, associations, or other entities holding securities in a nominee name or otherwise on behalf of a beneficial owner (collectively "Nominee Holders"), shall not be considered outstanding. However, if the foreign corporation requests all Nominee Holders to certify, with respect to all beneficial owners for whom securities are held, the number of shares held for those beneficial owners having addresses (as shown on the records of the Nominee Holder) in this state and outside of this state, then all shares so certified shall be considered outstanding and held of record by persons having addresses either in this state or outside of this state as so certified, provided that the certification so provided shall be retained with the record of shareholders and made available for inspection and copying in the same manner as is provided in Section 1600 with respect to that record. A current list of beneficial owners of a foreign corporation's securities provided to the corporation by one or more Nominee Holders or their agent pursuant to the requirements of Rule 14b-1(b)(3) or 14b-2(b)(3) as adopted on January 6, 1992, promulgated under the Securities Exchange Act of 1934, shall constitute an acceptable certification with respect to beneficial owners for the purposes of this subdivision.

(b) Except as provided in subdivision (c), the following chapters and sections of this division shall apply to a foreign corporation as defined in subdivision (a) (to the exclusion of the law of the jurisdiction in which it is incorporated):

Chapter 1 (general provisions and definitions), to the extent applicable to the following provisions;

Section 301 (annual election of directors);

Section 303 (removal of directors without cause);

Section 304 (removal of directors by court proceedings);

Section 305, subdivision (c) (filling of director vacancies where less than a majority in office elected by shareholders);

Section 309 (directors' standard of care);

Section 316 (excluding paragraph (3) of subdivision (a) and paragraph (3) of subdivision (f)) (liability of directors for unlawful distributions);

Section 317 (indemnification of directors, officers, and others);

Sections 500 to 505, inclusive (limitations on corporate distributions in cash or property);

Section 506 (liability of shareholder who receives unlawful distribution);

Section 600, subdivisions (b) and (c) (requirement for annual shareholders' meeting and remedy if same not timely held);

Section 708, subdivisions (a), (b), and (c) (shareholder's right to cumulate votes at any election of directors);

Section 710 (supermajority vote requirement);

Section 1001, subdivision (d) (limitations on sale of assets);

Section 1101 (provisions following subdivision (e)) (limitations on mergers);

Chapter 12 (commencing with Section 1200) (reorganizations);

Chapter 13 (commencing with Section 1300) (dissenters' rights);

Sections 1500 and 1501 (records and reports);

Section 1508 (action by Attorney General);

Chapter 16 (commencing with Section 1600) (rights of inspection).

(c) This section does not apply to any corporation (1) with outstanding securities listed on the New York Stock Exchange or the American Stock Exchange, or (2) with outstanding securities designated as qualified for trading as a national market security on the National Association of Securities Dealers Automatic Quotation System (or any successor national market system) if the corporation has at least 800 holders of its equity securities as of the record date of its most recent annual meeting of shareholders, or (3) if all of its voting shares (other than directors' qualifying shares) are owned directly or indirectly by a corporation or corporations not subject to this section. For purposes of determining the number of holders of a corporation's equity securities under clause (2) of this subdivision, there shall be included, in addition to the number of recordholders reflected on the corporation's stock records, the number of holders of the equity securities held in the name of any Nominee Holder that furnishes the corporation with a certification pursuant to subdivision (a) provided that the corporation retains the certification with the record of shareholders and makes it available for inspection and copying in the same manner as is provided in Section 1600 with respect to that record.

(d) For purposes of subdivision (a), the requirements of subdivision (b) shall become applicable to a foreign corporation only

upon the first day of the first income year of the corporation (i) commencing on or after the 135th day of the income year immediately following the latest income year with respect to which the tests referred to in subdivision (a) have been met or (ii) commencing on or after the entry of a final order by a court of competent jurisdiction declaring that those tests have been met.

(e) For purposes of subdivision (a), the requirements of subdivision (b) shall cease to be applicable to a foreign corporation (i) at the end of the first income year of the corporation immediately following the latest income year with respect to which at least one of the tests referred to in subdivision (a) is not met or (ii) at the end of the income year of the corporation during which a final order has been entered by a court of competent jurisdiction declaring that one of those tests is not met, provided that a contrary order has not been entered before the end of the income year.

SEC. 3. Section 29 of Chapter 57 of the Statutes of 1996 is amended to read:

Sec. 29. Existing business entities, such as partnerships and corporations, shall be permitted to convert into or transfer real property to, limited liability companies without incurring a documentary transfer tax, provided that the direct or indirect proportionate interests in the property remain the same.

CHAPTER 515

An act to add Section 435 to the Labor Code, relating to employment surveillance.

[Approved by Governor September 15, 1998. Filed with Secretary of State September 15, 1998.]

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

SECTION 1. Section 435 is added to the Labor Code, to read:

435. (a) No employer may cause an audio or video recording to be made of an employee in a restroom, locker room, or room designated by an employer for changing clothes, unless authorized by court order.

(b) No recording made in violation of this section may be used by an employer for any purpose. This section applies to a private or public employer, except the federal government.

(c) A violation of this section constitutes an infraction.

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 516

An act to amend Section 19607 of the Business and Professions Code, relating to horse racing.

[Approved by Governor September 15, 1998. Filed with Secretary of State September 15, 1998.]

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

SECTION 1. Section 19607 of the Business and Professions Code is amended to read:

19607. Notwithstanding Sections 19605.8 and 19605.9, when satellite wagering is conducted on thoroughbred races at associations or fairs in the central or southern zone, an amount not to exceed 1.25 percent of the total amount handled by all of those satellite wagering facilities shall be deducted from the funds otherwise allocated for distribution as commissions, purses, and owners' premiums and instead distributed to an organization formed and operated by thoroughbred racing associations, fairs conducting thoroughbred racing, and the organization representing thoroughbred horsemen and horsewomen, with each party having meaningful representation on the board of the organization, to administer, pursuant to supervision of the board, a fund to provide reimbursement for offsite stabling at board-approved auxiliary training facilities for additional stalls beyond the number of usable stalls the association or fair is required to make available and maintain pursuant to Section 19535, and for the vanning of starters from these additional stalls on racing days for thoroughbred horses.

CHAPTER 517

An act to amend Sections 11713 and 24007 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 15, 1998. Filed with Secretary of State September 15, 1998.]

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

SECTION 1. Section 11713 of the Vehicle Code is amended to read:

11713. No holder of any license issued under this article shall do any of the following:

(a) Make or disseminate, or cause to be made or disseminated, before the public in this state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, any statement which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading; or to so make or disseminate, or cause to be so disseminated, any statement as part of a plan or scheme with the intent not to sell any vehicle or service so advertised at the price stated therein, or as so advertised.

(b) (1) (A) Advertise or offer for sale or exchange in any manner, any vehicle not actually for sale at the premises of the dealer or available to the dealer directly from the manufacturer or distributor of the vehicle at the time of the advertisement or offer. However, a dealer who has been issued an autobroker's endorsement to his or her dealer's license may advertise his or her service of arranging or negotiating the purchase of a new motor vehicle from a franchised new motor vehicle dealer and may specify the line-makes and models of those new vehicles. Autobrokering service advertisements may not advertise the price or payment terms of any vehicle and shall disclose that the advertiser is an autobroker or auto buying service, and shall clearly and conspicuously state the following: "All new cars arranged for sale are subject to price and availability from the selling franchised new car dealer."

(B) As to printed advertisements, the disclosure statement required by subparagraph (A) shall be printed in not less than 10-point bold type size and shall be textually segregated from the other portions of the printed advertisement.

(2) Notwithstanding subparagraph (A), classified advertisements for autobrokering services that measure two column inches or less are exempt from the disclosure statement in subparagraph (A) pertaining to price and availability.

(3) Radio advertisements of a duration of less than 11 seconds that do not reference specific line-makes or models of motor vehicles are exempt from the disclosure statement required in subparagraph (A).

(c) Fail, within 48 hours, in writing to withdraw any advertisement of a vehicle that has been sold or withdrawn from sale.

(d) Advertise or represent a vehicle as a new vehicle if the vehicle is a used vehicle.

(e) Engage in the business for which the licensee is licensed without having in force and effect a bond as required by this article.

(f) Engage in the business for which the dealer is licensed without at all times maintaining an established place of business as required by this code.

(g) Include, as an added cost to the selling price of a vehicle, an amount for licensing or transfer of title of the vehicle, which is not due to the state unless, prior to the sale, that amount has been paid by a dealer to the state in order to avoid penalties that would have accrued because of late payment of the fees. However, a dealer may collect from the second purchaser of a vehicle a prorated fee based upon the number of months remaining in the registration year for that vehicle, if the vehicle had been previously sold by the dealer and the sale was subsequently rescinded and all the fees that were paid, as required by this code and Chapter 2 (commencing with Section 10751) of Division 2 of the Revenue and Taxation Code, were returned to the first purchaser of the vehicle.

(h) Employ any person as a salesperson who has not been licensed pursuant to Article 2 (commencing with Section 11800), and whose license is not displayed on the premises of the dealer as required by Section 11812, or willfully fail to notify the department by mail within 10 days of the employment or termination of employment of a salesperson.

(i) Deliver, following the sale, a vehicle for operation on California highways, if the vehicle does not meet all of the equipment requirements of Division 12 (commencing with Section 24000). This subdivision does not apply to the sale of a leased vehicle to the lessee if the lessee is in possession of the vehicle immediately prior to the time of the sale and the vehicle is registered in this state.

(j) Use, or permit the use of, the special plates assigned to him or her for any purpose other than as permitted by Section 11715.

(k) Advertise or otherwise represent, or knowingly allow to be advertised or represented on behalf of, or at the place of business of, the licenseholder that no downpayment is required in connection with the sale of a vehicle when a downpayment is in fact required and the buyer is advised or induced to finance the downpayment by a loan in addition to any other loan financing the remainder of the purchase price of the vehicle.

(*l*) Participate in the sale of a vehicle required to be reported to the Department of Motor Vehicles under Section 5900 or 5901 without making the return and payment of the full sales tax due and required by Section 6451 of the Revenue and Taxation Code.

(m) Permit the use of the dealer's license, supplies, or books by any other person for the purpose of permitting that person to engage in the purchase or sale of vehicles required to be registered under this code, or permit the use of the dealer's license, supplies, or books to operate a branch location to be used by any other person, whether or not the licensee has any financial or equitable interest or investment in the vehicles purchased or sold by, or the business of, or branch location used by, the other person.

(n) Violate any provision of Article 10 (commencing with Section 28050) of Chapter 5 of Division 12.

(o) Sell a previously unregistered vehicle without disclosing in writing to the purchaser the date on which any manufacturer's or distributor's warranty commenced.

(p) Accept a purchase deposit relative to the sale of a vehicle, unless the vehicle is present at the premises of the dealer or available to the dealer directly from the manufacturer or distributor of the vehicle at the time the dealer accepts the deposit. Purchase deposits accepted by an autobroker when brokering a retail sale shall be governed by Sections 11736 and 11737.

(q) Consign for sale to another dealer a new vehicle.

(r) Display a vehicle for sale at a location other than an established place of business authorized by the department for that dealer or display a new motor vehicle at the business premises of another dealer registered as an autobroker. This subdivision does not apply to the display of a vehicle pursuant to subdivision (b) of Section 11709 or the demonstration of the qualities of a motor vehicle by way of a test drive.

SEC. 2. Section 24007 of the Vehicle Code is amended to read:

24007. (a) (1) No dealer or person holding a retail seller's permit shall sell a new or used vehicle which is not in compliance with this code and departmental regulations adopted pursuant to this code, unless the vehicle is sold to another dealer, sold for the purpose of being legally wrecked or dismantled, or sold exclusively for off-highway use.

(2) Paragraph (1) does not apply to any vehicle sold by either (A) a dismantler after being reported for dismantling pursuant to Section 11520 or (B) a salvage pool after obtaining a salvage certificate pursuant to Section 11515 or a nonrepairable vehicle certificate issued pursuant to Section 11515.2.

(3) Notwithstanding paragraph (1), the equipment requirements of this division do not apply to the sale of a leased vehicle by a dealer to a lessee if the lessee is in possession of the vehicle immediately prior to the time of the sale and the vehicle is registered in this state.

(b) (1) Except as provided in Section 24007.5, no person shall sell, or offer or deliver for sale, to the ultimate purchaser, or to any subsequent purchaser a new or used motor vehicle, as those terms are defined in Chapter 2 (commencing with Section 39010) of Part 1 of Division 26 of the Health and Safety Code, subject to Part 5 (commencing with Section 43000) of that Division 26 which is not in compliance with that Part 5 and the rules and regulations of the State Air Resources Board, unless the vehicle is sold to a dealer or sold for the purpose of being legally wrecked or dismantled.

(2) Prior to or at the time of delivery for sale, the seller shall provide the purchaser a valid certificate of compliance or certificate of noncompliance, as appropriate, issued in accordance with Section 44015 of the Health and Safety Code.

(3) Paragraph (2) does not apply to any vehicle whose transfer of ownership and registration is described in subdivision (d) of Section 4000.1.

(4) Paragraphs (1) and (2) do not apply to any vehicle sold by either (A) a dismantler after being reported for dismantling pursuant to Section 11520 or (B) a salvage pool after obtaining a salvage certificate pursuant to Section 11515 or a nonrepairable vehicle certificate issued pursuant to Section 11515.2.

(c) (1) With each application for initial registration of a new motor vehicle or transfer of registration of a motor vehicle subject to Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code, a dealer, the purchaser, or his or her authorized representative, shall transmit to the Department of Motor Vehicles a valid certificate of compliance or noncompliance, as appropriate, issued in accordance with Section 44015 of the Health and Safety Code.

(2) Notwithstanding paragraph (1) of this subdivision, with respect to new vehicles certified pursuant to Chapter 2 (commencing with Section 43100) of Part 5 of Division 26 of the Health and Safety Code, a dealer may transmit, in lieu of a certificate of compliance, a statement, in a form and containing information deemed necessary and appropriate by the Director of Motor Vehicles and the Executive Officer of the State Air Resources Board, to attest to the vehicle's compliance with that Chapter 2. The statement shall be certified under penalty of perjury, and shall be signed by the dealer or the dealer's authorized representative.

CHAPTER 518

An act to repeal Chapter 1.5 (commencing with Section 1120) of Part 2 of Division 1 of the Insurance Code, relating to insurance.

[Approved by Governor September 15, 1998. Filed with Secretary of State September 15, 1998.]

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

SECTION 1. Chapter 1.5 (commencing with Section 1120) of Part 2 of Division 1 of the Insurance Code is repealed.

CHAPTER 519

An act to amend Section 121135 of the Health and Safety Code, relating to AIDS.

[Approved by Governor September 15, 1998. Filed with Secretary of State September 15, 1998.]

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

SECTION 1. Section 121135 of the Health and Safety Code is amended to read:

121135. Notwithstanding Chapter 7 (commencing with Section 120975) or any other provision of law, the blood or other tissue or material of a source patient may be tested, and an exposed individual may be informed of the HIV status of the patient, if the exposed individual and the health care facility, if any, have substantially complied with the then applicable guidelines of the Division of Occupational Safety and Health and the State Department of Health Services and if the following procedure is followed:

(a) (1) Whenever an individual becomes an exposed individual by experiencing an exposure to the blood or other potentially infectious material of a patient during the course of rendering health-care-related services or occupational services, the exposed individual may request an evaluation of the exposure by a physician to determine if it is a significant exposure as defined in subdivision (h) of Section 121132. No physician or other exposed individual shall certify his or her own significant exposure. However, an employing physician may certify the exposure of one of his or her employees. Requests for certification shall be made in writing within 72 hours of the exposure.

(2) A written certification by a physician of the significance of the exposure shall be obtained within 72 hours of the request. The certification shall include the nature and extent of the exposure.

(b) (1) The exposed individual shall be counseled regarding the likelihood of transmission, the limitations of an HIV test, the need for followup testing, and the procedures that the exposed individual must follow regardless of the HIV status of the source patient. The exposed individual may be tested in accordance with the then applicable guidelines or standards of the Division of Occupational Safety and Health. The result of this test shall be confirmed as negative before available blood or other patient samples of the source patient may be tested for evidence of HIV infection without the consent of the source patient pursuant to subdivision (d).

(2) Within 72 hours of certifying the exposure as significant, the certifying physician shall provide written certification to an attending physician of the source patient that a significant exposure to an exposed individual has occurred, and shall request information on the HIV status of the source patient and the availability of blood or other patient sample. An attending physician shall respond to the request for information within three working days.

(c) If the HIV status of the source patient is already known to be positive, then, except as provided in subdivisions (b) and (c) of

Section 121010 when the exposed individual is a health care provider or an employee or agent of the health care provider of the source patient, an attending physician and surgeon of the source patient shall attempt to obtain the consent of the source patient to disclose to the exposed individual the HIV status of the source patient. If the source patient cannot be contacted or refuses to consent to the disclosure, then the exposed individual may be informed of the HIV status of the source patient by an attending physician of the source patient as soon as possible after the exposure has been certified as significant, notwithstanding Section 120980 or any other provision of law.

(d) If the HIV status of the source patient is unknown to the certifying physician or an attending physician, if blood or other patient samples are available, and if the exposed individual has tested negative on a baseline HIV test, the source patient shall be given the opportunity to give informed consent to an HIV test in accordance with the following:

(1) Within 72 hours after receiving a written certification of significant exposure, an attending physician of the source patient shall do all of the following:

(A) Make a good faith effort to notify the source patient or the authorized legal representative of the source patient about the significant exposure. A good faith effort to notify includes, but is not limited to, a documented attempt to locate the source patient by telephone or by first-class mail with a certificate of mailing. An attempt to locate the source patient and the results of that attempt shall be documented in the medical record of the source patient. An inability to contact the source patient, or legal representative of the source patient, after a good faith effort to do so as provided in this subdivision, shall constitute a refusal of consent pursuant to paragraph (2). An inability of the source patient to provide informed consent shall constitute a refusal of consent pursuant to paragraph (2), provided all of the following conditions are met:

(i) The source patient has no authorized legal representative.

(ii) The source patient is incapable of giving consent.

(iii) In the opinion of the attending physician, it is likely that the source patient will be unable to grant informed consent within the 72-hour period during which the physician is required to respond pursuant to paragraph (1).

(B) Attempt to obtain the voluntary informed consent of the source patient or the authorized legal representative of the source patient to perform an HIV test on the source patient or on any available blood or patient sample of the source patient. The voluntary informed consent shall be in writing. The source patient shall have the option not to be informed of the test result. An exposed individual shall be prohibited from attempting to obtain directly informed consent for HIV testing from the source patient.

(C) Provide the source patient with medically appropriate pretest counseling and refer the source patient to appropriate posttest counseling and followup, if necessary. The source patient shall be offered medically appropriate counseling whether or not he or she consents to testing.

(2) If the source patient or the authorized legal representative of the source patient refuses to consent to an HIV test after a documented effort has been made to obtain consent, then any available blood or patient sample of the source patient may be tested. The source patient or authorized legal representative of the source patient shall be informed that an available blood sample or other tissue or material will be tested despite his or her refusal, and that the exposed individual shall be informed of the HIV test results.

(3) If the informed consent of the source patient cannot be obtained because the source patient is deceased, consent to perform an HIV test on any blood or patient sample of the source patient legally obtained in the course of providing health care services at the time of the exposure event shall be deemed granted.

(4) A source patient or the authorized legal representative of a source patient shall be advised that he or she shall be informed of the results of the HIV test only if he or she wishes to be so informed. If a patient refuses to provide informed consent to HIV testing and refuses to learn the results of HIV testing, then he or she shall sign a form documenting this refusal. The source patient's refusal to sign this form shall be construed to be a refusal to be informed of the HIV test results. HIV test results shall only be placed in the medical record when the patient has agreed in writing to be informed of the results.

(5) Notwithstanding any other provision of law, if the source patient or authorized legal representative of a source patient refuses to be informed of the results of the test, then the HIV test results of that source patient shall only be provided to the exposed individual in accordance with the then applicable regulations established by the Division of Occupational Safety and Health.

(6) The source patient's identity shall be encoded on the HIV test result record.

(e) If an exposed individual is informed of the HIV status of a source patient pursuant to this section, the exposed individual shall be informed that he or she is subject to existing confidentiality protections for any identifying information about the HIV test results, and that HIV-related medical information of the source patient shall be kept confidential and may not be further disclosed, except as otherwise authorized by law. The exposed individual shall be informed of the penalties for which he or she would be personally liable for violation of Section 120980.

(f) The costs for the HIV test and counseling of the exposed individual, or the source patient, or both shall be borne by the employer of the exposed individual, if any. An employer who directs and controls the exposed individual shall provide the postexposure

evaluation and followup required by the California Division of Occupational Safety and Health as well as the testing and counseling for source patients required under this chapter. If an exposed individual is a volunteer or a student, then the health care provider or first responder that assigned a task to the volunteer or student may pay for the costs of testing and counseling as if that volunteer or student were an employee. If an exposed individual, who is not an employee of a health facility or of another health care provider, chooses to obtain postexposure evaluation or followup counseling, or both, or treatment, then he or she shall be financially responsible for the costs thereof and shall be responsible for the costs of the testing and counseling for the source patient.

(g) Nothing in this section authorizes the disclosure of the source patient's identity.

(h) Nothing in this section shall authorize a health care provider to draw blood or other body fluids except as otherwise authorized by law.

(i) The provisions of this section are cumulative only and shall not preclude HIV testing of source patients as authorized by any other provision of law.

SEC. 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 520

An act to amend Section 980 of, and to add Section 1319.5 to, the Penal Code, relating to criminal procedure.

[Approved by Governor September 15, 1998. Filed with Secretary of State September 15, 1998.]

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

SECTION 1. The Legislature finds and declares that Section 3 of this measure is not intended to in any way abrogate the primary consideration of public safety in determining whether a defendant should be released on his or her own recognizance.

SEC. 2. Section 980 of the Penal Code is amended to read:

980. (a) At any time after the order for a bench warrant is made, whether the court is sitting or not, the clerk may issue a bench warrant to one or more counties.

(b) The clerk shall require the appropriate agency to enter each bench warrant issued on a private surety-bonded felony case into the national warrant system (National Crime Information Center (NCIC)). If the appropriate agency fails to enter the bench warrant into the national warrant system (NCIC), and the court finds that this failure prevented the surety or bond agent from surrendering the fugitive into custody, prevented the fugitive from being arrested or taken into custody, or resulted in the fugitive's subsequent release from custody, the court having jurisdiction over the bail shall, upon petition, set aside the forfeiture of the bond and declare all liability on the bail bond to be exonerated.

SEC. 3. Section 1319.5 is added to the Penal Code, to read:

1319.5. (a) No person described in subdivision (b) who is arrested for a new offense may be released on his or her own recognizance until a hearing is held in open court before the magistrate or judge.

(b) Subdivision (a) shall apply to the following:

(1) Any person who is currently on felony probation or felony parole.

(2) Any person who has failed to appear in court as ordered, resulting in a warrant being issued, three or more times over the three years preceding the current arrest, except for infractions arising from violations of the Vehicle Code, and who is arrested for any of the following offenses:

(A) Any felony offense.

(B) Any violation of the California Street Terrorism Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1).

(C) Any violation of Chapter 9 (commencing with Section 240) of Title 8 of Part 1 (assault and battery).

(D) A violation of Section 484 (theft).

(E) A violation of Section 459 (burglary).

(F) Any offense in which the defendant is alleged to have been armed with or to have personally used a firearm.

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

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

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

CHAPTER 521

An act to amend and repeal Sections 1374.7 of the Health and Safety Code, and to amend Sections 742.405 and 10148 of, and to amend and repeal Sections 10123.3 and 10140 of, the Insurance Code, relating to health insurance.

[Approved by Governor September 15, 1998. Filed with Secretary of State September 15, 1998.]

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

SECTION 1. Section 1374.7 of the Health and Safety Code, as amended by Section 2 of Chapter 532 of the Statutes of 1996, is amended to read:

1374.7. (a) No plan shall refuse to enroll any person or accept any person as a subscriber or renew any person as a subscriber after appropriate application on the basis of a person's genetic characteristics that may, under some circumstances, be associated with disability in that person or that person's offspring. No plan shall require a higher rate or charge, or offer or provide different terms, conditions, or benefits, on the basis of a person's genetic characteristics that may, under some circumstances, be associated with disability in that person or that person's offspring.

(b) No plan shall seek information about a person's genetic characteristics for any nontherapeutic purpose.

(c) No discrimination shall be made in the fees or commissions of a solicitor or solicitor firm for an enrollment or a subscription or the renewal of an enrollment or subscription of any person on the basis of a person's genetic characteristics that may, under some circumstances, be associated with disability in that person or that person's offspring.

(d) "Genetic characteristics" as used in this section means any scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, that is known to be a cause of a disease or disorder in a person or his or her offspring, or that is determined to be associated with a statistically increased risk of development of a disease or disorder, or inherited characteristics that may derive from the individual or family member, that is presently not associated with any symptoms of any disease or disorder.

SEC. 2. Section 1374.7 of the Health and Safety Code, as added by Section 2 of Chapter 761 of the Statutes of 1994, is repealed.

SEC. 3. Section 742.405 of the Insurance Code is amended to read:

742.405. (a) No multiple employer welfare arrangement shall refuse to enroll any person or accept any person as a subscriber or renew any person as a subscriber after appropriate application on the basis of a person's genetic characteristics that may, under some circumstances, be associated with disability in that person or that person's offspring. No multiple employer welfare arrangement shall require a higher rate or charge, or offer or provide different terms, conditions, or benefits, on the basis of a person's genetic characteristics that may, under some circumstances, be associated with disability in that person or that person's offspring than is at that time required of any other individual in an otherwise identical classification, nor shall any multiple employer welfare arrangement make or require any rebate, discrimination, or discount upon the amount to be paid or the service to be rendered under the arrangement because the person carries those traits.

(b) No multiple employer welfare arrangement shall seek information about a person's genetic characteristics for any nontherapeutic purpose.

(c) No discrimination shall be made in the fees or commissions of a solicitor or solicitor firm for an enrollment or a subscription or the renewal of an enrollment or subscription of any person on the basis of a person's genetic characteristics that may, under some circumstances, be associated with disability in that person or that person's offspring.

(d) "Genetic characteristics" as used in this section shall have the same meaning as defined in Section 10123.3.

SEC. 4. Section 10123.3 of the Insurance Code, as amended by Section 6 of Chapter 532 of the Statutes of 1996, is amended to read:

10123.3. (a) No self-insured employee welfare benefit plan shall refuse to enroll any person or accept any person as a subscriber or renew any person as a subscriber after appropriate application on the basis of a person's genetic characteristics that may, under some circumstances, be associated with disability in that person or that person's offspring. No plan shall require a higher rate or charge, or offer or provide different terms, conditions, or benefits, on the basis of a person's genetic characteristics that may, under some circumstances, be associated with disability in that person or that person's offspring than is at the time required of any other individual in an otherwise identical classification, nor shall any plan make or require any rebate, discrimination, or discount upon the amount to be paid or the service to be rendered under the plan because the person carries those traits.

(b) No self-insured employee welfare benefit plan shall seek information about a person's genetic characteristics for any nontherapeutic purpose.

(c) No discrimination shall be made in the fees or commissions of a solicitor or solicitor firm for an enrollment or a subscription or the renewal of an enrollment or subscription of any person on the basis

of a person's genetic characteristics that may, under some circumstances, be associated with disability in that person or that person's offspring.

(d) "Genetic characteristics" as used in this section means any scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, that is known to be a cause of a disease or disorder in a person or his or her offspring, or that is determined to be associated with a statistically increased risk of development of a disease or disorder, or inherited characteristics that may derive from the individual or family member, that is presently not associated with any symptoms of any disease or disorder.

SEC. 5. Section 10123.3 of the Insurance Code, as added by Section 4 of Chapter 761 of the Statutes of 1994, is repealed.

SEC. 6. Section 10140 of the Insurance Code, as amended by Section 8 of Chapter 532 of the Statutes of 1996, is amended to read:

10140. (a) No admitted insurer, licensed to issue life or disability insurance, shall fail or refuse to accept an application for that insurance, to issue that insurance to an applicant therefor, or issue or cancel that insurance, under conditions less favorable to the insured than in other comparable cases, except for reasons applicable alike to persons of every race, color, religion, national origin, ancestry, or sexual orientation. Race, color, religion, national origin, ancestry, or sexual orientation shall not, of itself, constitute a condition or risk for which a higher rate, premium, or charge may be required of the insured for that insurance.

(b) Except as otherwise permitted by law, no admitted insurer, licensed to issue disability insurance policies for hospital, medical, and surgical expenses, shall fail or refuse to accept an application for that insurance, fail or refuse to issue that insurance to an applicant therefor, cancel that insurance, refuse to renew that insurance, charge a higher rate or premium for that insurance, or offer or provide different terms, conditions, or benefits, or place a limitation on coverage under that insurance, on the basis of a person's genetic characteristics that may, under some circumstances, be associated with disability in that person or that person's offspring.

(c) No admitted insurer, licensed to issue disability insurance for hospital, medical, and surgical expenses, shall seek information about a person's genetic characteristics for any nontherapeutic purpose.

(d) No discrimination shall be made in the fees or commissions of agents or brokers for writing or renewing a policy of disability insurance, other than disability income, on the basis of a person's genetic characteristics that may, under some circumstances, be associated with disability in that person or that person's offspring.

(e) It shall be deemed a violation of subdivision (a) for any insurer to consider sexual orientation in its underwriting criteria or to utilize marital status, living arrangements, occupation, gender, beneficiary designation, ZIP Codes or other territorial classification within this state, or any combination thereof for the purpose of establishing

sexual orientation or determining whether to require a test for the presence of the human immunodeficiency virus or antibodies to that virus, where that testing is otherwise permitted by law. Nothing in this section shall be construed to alter, expand, or limit in any manner the existing law respecting the authority of insurers to conduct tests for the presence of human immunodeficiency virus or evidence thereof.

(f) This section shall not be construed to limit the authority of the commissioner to adopt regulations prohibiting discrimination because of sex, marital status, or sexual orientation or to enforce these regulations, whether adopted before or on or after January 1, 1991.

(g) "Genetic characteristics" as used in this section shall have the same meaning as defined in Section 10123.3.

SEC. 7. Section 10140 of the Insurance Code, as added by Section 6 of Chapter 761 of the Statutes of 1994, is repealed.

SEC. 8. Section 10148 of the Insurance Code is amended to read:

10148. No insurer shall require a test for the presence of a genetic characteristic for the purpose of determining insurability other than for those policies that are contingent on review or testing for other diseases or medical conditions. In those cases, the test shall be done in accordance with the informed consent and privacy protection provisions of this article and Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1. Notwithstanding any other provision of law, this constitutes the exclusive requirements for informed consent and privacy protection for that testing.

(a) An insurer that requests an applicant to take a genetic characteristic test shall obtain the applicant's written informed consent for the test. Written informed consent shall include a description of the test to be performed, including its purpose, potential uses, and limitations, the meaning of its results, procedures for notifying the applicant of the results, and the right to confidential treatment of the results.

(b) The insurer shall notify an applicant of a test result by notifying the applicant or the applicant's designated physician. If the applicant tested has not given written consent authorizing a physician to receive the test results, the applicant shall be urged, at the time the applicant is informed of the test results, to contact a health care professional.

(c) The commissioner shall develop and adopt standardized language for the informed consent disclosure form required by this section to be given to any applicant for life or disability income insurance who takes a test for a genetic characteristic.

(d) A life or disability income insurer shall not require a person to undergo a test of the person's genetic characteristics unless the cost of the test is paid by the insurer.

(e) No policy shall limit benefits otherwise payable if loss is caused or contributed to by the presence or absence of genetic characteristics, except to the extent and in the same fashion as the

insurer limits coverage for loss caused or contributed to by other medical conditions presenting an increased degree of risk.

(f) Nothing in this chapter shall limit an insurer's right to decline an application or enrollment request for a life or disability income insurance policy, charge a higher rate or premium for such a policy, or place a limitation on coverage under such a policy, on the basis of manifestations of any disease or disorder.

(g) No discrimination shall be made in the fees or commissions of agents or brokers writing or renewing a life or disability income policy on the basis of a test of that person's genetic characteristics.

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 522

An act to amend and repeal Section 1001.65 of, the Penal Code, relating to crimes, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 15, 1998. Filed with Secretary of State September 15, 1998.]

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

SECTION 1. Section 1001.65 of the Penal Code, as amended by Section 1 of Chapter 996 of the Statutes of 1996, is amended to read:

1001.65. (a) A district attorney may collect a fee if his or her office collects and processes a bad check. The amount of the fee shall not exceed thirty-five ($35) for each bad check in addition to the actual amount of any bank charges incurred by the victim as a result of the offense.

(b) Notwithstanding subdivision (a), when a criminal complaint is filed in a bad check case after the maker of the check fails to comply with the terms of the bad check diversion program, the court, after conviction, may impose a bad check collection fee for the collection and processing efforts by the district attorney of not more than thirty-five ($35) for each bad check in addition to the actual amount

of any bank charges incurred by the victim as a result of the offense, not to exceed one thousand dollars ($1,000) in the aggregate. The court also may, as a condition of probation, require a defendant to participate in and successfully complete a check writing education class. If so required, the court shall make inquiry into the financial condition of the defendant and, upon a finding that the defendant is able in whole or part to pay the expense of the education class, the court may order him or her to pay for all or part of that expense.

(c) If the district attorney elects to collect any fee for bank charges incurred by the victim pursuant to this section, that fee shall be paid to the victim for any bank fees that the victim may have been assessed. In no event shall reimbursement of a bank charge to the victim pursuant to subdivision (a) or (b) exceed ten dollars ($10) per check.

(d) On or before January 1, 1998, the Judicial Council shall prepare a report on the effect of the amendments to this section enacted at the 1995–96 Regular Session of the Legislature, and submit that report to the Senate and Assembly Judiciary Committees.

SEC. 2. Section 1001.65 of the Penal Code, as added by Section 1.4 of Chapter 996 of the Statutes of 1996, is repealed.

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 assure that the provisions of Section 1001.65 as amended by Section 1 of Chapter 996 of the Statutes of 1996 are continuously in effect, it is necessary that this act take effect immediately.

CHAPTER 523

An act to add Section 512 to the Business and Professions Code, to add Section 1395.5 to the Health and Safety Code, and to add Section 10127.4 to the Insurance Code, relating to health coverage.

[Approved by Governor September 15, 1998. Filed with Secretary of State September 15, 1998.]

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

SECTION 1. The Legislature finds and declares as follows:

(a) The State of California recognizes that one of the benefits of managed care is the availability of a broad range of services to patients.

(b) If patients are unaware of services available to them, they may not use these services, even when to do so would be beneficial to their health.

(c) Patients' awareness of covered services and participating providers will be improved if health care providers are permitted to advertise their participation in provider panels or networks in an appropriate manner.

SEC. 2. Section 512 is added to the Business and Professions Code, to read:

512. (a) Except as provided in subdivisions (b) and (c), no contract that is issued, amended, renewed, or delivered on or after January 1, 1999, between any person or entity, including, but not limited to, any group of physicians and surgeons, any medical group, any independent practice association (IPA), or any preferred provider organization (PPO), and a health care provider shall contain provisions that prohibit, restrict, or limit the health care provider from advertising.

(b) Nothing in this section shall be construed to prohibit the establishment of reasonable guidelines in connection with the activities regulated pursuant to this division, including those to prevent advertising that is, in whole or in part, untrue, misleading, deceptive, or otherwise inconsistent with this division or the rules and regulations promulgated thereunder. For advertisements mentioning a provider's participation in a plan or product line of any person or entity, nothing in this section shall be construed to prohibit requiring each advertisement to contain a disclaimer to the effect that the provider's services may be covered for some, but not all, plans or product lines of that person or entity, or that the person or entity may cover some, but not all, provider services.

(c) Nothing in this section is intended to prohibit provisions or agreements intended to protect service marks, trademarks, trade secrets, or other confidential information or property. If a health care provider participates on a provider panel or network as a result of a direct contractual arrangement with a person or entity, including, but not limited to, any group of physicians and surgeons, any medical group, any independent practice association, or any preferred provider organization, that, in turn, has entered into a direct contractual arrangement with another person or entity, pursuant to which enrollees, subscribers, insureds, and other beneficiaries of that other person or entity may receive covered services from the health care provider, then nothing in this section is intended to prohibit reasonable provisions or agreements in the direct contractual arrangement between the health care provider and the person or entity that protect the name or trade name of the other person or entity or require that the health care provider obtain the consent of the person or entity prior to the use of the name or trade name of the person or entity in any advertising by the health care provider.

(d) Nothing in this section shall be construed to impair or impede the authority of any state department to regulate advertising, disclosure, or solicitation pursuant to this division.

SEC. 3. Section 1395.5 is added to the Health and Safety Code, to read:

1395.5. (a) Except as provided in subdivisions (b) and (c), no contract that is issued, amended, renewed, or delivered on or after January 1, 1999, between a health care service plan, including a specialized health care service plan, and a provider shall contain provisions that prohibit, restrict, or limit the health care provider from advertising.

(b) Nothing in this section shall be construed to prohibit plans from establishing reasonable guidelines in connection with the activities regulated pursuant to this chapter, including those to prevent advertising that is, in whole or in part, untrue, misleading, deceptive, or otherwise inconsistent with this chapter or the rules and regulations promulgated thereunder. For advertisements mentioning a provider's participation in a plan, nothing in this section shall be construed to prohibit plans from requiring each advertisement to contain a disclaimer to the effect that the provider's services may be covered for some, but not all, plan contracts, or that plan contracts may cover some, but not all, provider services.

(c) Nothing in this section is intended to prohibit provisions or agreements intended to protect service marks, trademarks, trade secrets, or other confidential information or property. If a health care provider participates on a provider panel or network as a result of a direct contractual arrangement with a health care service plan that, in turn, has entered into a direct contractual arrangement with another person or entity, pursuant to which enrollees, subscribers, insureds, and other beneficiaries of that other person or entity may receive covered services from the health care provider, then nothing in this section is intended to prohibit reasonable provisions or agreements in the direct contractual arrangement between the health care provider and the health care service plan that protect the name or trade name of the other person or entity or require that the health care provider obtain the consent of the health care service plan prior to the use of the name or trade name of the other person or entity in any advertising by the health care provider.

(d) Nothing in this section shall be construed to impair or impede the authority of the commissioner to regulate advertising, disclosure, or solicitation pursuant to this chapter.

SEC. 4. Section 10127.4 is added to the Insurance Code, to read:

10127.4. (a) Except as provided in subdivisions (b) and (c), no contract that is issued, amended, renewed, or delivered on or after January 1, 1999, between a disability insurer that provides coverage for hospital, medical, or surgical benefits and a health care provider shall contain provisions that prohibit, restrict, or limit the health care provider from advertising.

(b) Nothing in this section shall be construed to prohibit disability insurers from establishing reasonable guidelines in connection with the activities regulated pursuant to this part, including those to

prevent advertising that is, in whole or in part, untrue, misleading, deceptive, or otherwise inconsistent with this part or the rules and regulations promulgated thereunder. For advertisements mentioning a provider's participation in a plan or product line of a disability insurer, nothing in this section shall be construed to prohibit disability insurers from requiring each advertisement to contain a disclaimer to the effect that the provider's services may be covered for some, but not all, plans or product lines of the disability insurer, or that the disability insurer may cover some, but not all, provider services.

(c) Nothing in this section is intended to prohibit provisions or agreements intended to protect service marks, trademarks, trade secrets, or other confidential information or property. If a health care provider participates in a provider panel or network as a result of a direct contractual agreement with a disability insurer that, in turn, has entered into a direct contractual agreement with another person or entity, pursuant to which insureds and other beneficiaries of that other person or entity may receive covered services from the health care provider, then nothing in this section is intended to prohibit reasonable provisions or agreements in the direct contractual arrangement between the health care provider and the disability insurer that protect the name or trade name of the other person or entity or requires that the health care provider obtain the consent of the disability insurer prior to the use of the name or trade name of the other person or entity in any advertising by the health care provider.

(d) Nothing in this section shall be construed to impair or impede the authority of the commissioner to regulate advertising, disclosure, or solicitation pursuant to this part.

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 524

An act to amend Sections 4646 and 5100.6 of the Labor Code, relating to workers' compensation vocational rehabilitation services.

[Approved by Governor September 15, 1998. Filed with Secretary of State September 15, 1998.]

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

SECTION 1. Section 4646 of the Labor Code is amended to read:

4646. Settlement or commutation of prospective vocational rehabilitation services shall not be permitted under Chapter 2 (commencing with Section 5000) or Chapter 3 (commencing with Section 5100) of Part 3 except upon a finding by a workers' compensation judge that there are good faith issues which, if resolved against the employee, would defeat the employee's right to all compensation under this division.

SEC. 2. Section 5100.6 of the Labor Code is amended to read:

5100.6. Notwithstanding the provisions of Section 5100, the appeals board shall not permit the commutation or settlement of prospective compensation or indemnity payments or other benefits to which the employee is entitled under vocational rehabilitation.

SEC. 3. The amendments of Sections 4646 and 5100.6 of the Labor Code made by this act do not constitute a change in, but are declaratory of, existing law.

CHAPTER 525

An act to amend Sections 6596, 7852.27, 7857, 7858, 8246.6, 8405.1, 8561.5, 8562, 8568, 8569, 9000, 9001.5, and 9001.6 of, and to repeal Sections 8233.1 and 8255 of, the Fish and Game Code, relating to fishing.

[Approved by Governor September 15, 1998. Filed with Secretary of State September 15, 1998.]

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

SECTION 1. Section 6596 of the Fish and Game Code is amended to read:

6596. (a) In addition to a valid California fishing license issued pursuant to Section 7149 and any other applicable license stamp issued pursuant to this code, a person taking fish from ocean waters south of a line extending due west from Point Arguello for purposes other than for profit shall have permanently affixed to his or her fishing license, except a sport fishing license issued pursuant to paragraph (4) of subdivision (a) of Section 7149, an ocean fishing enhancement stamp. A license stamp issued under this subdivision shall be issued for the following fees:

(1) A stamp for a sport fishing or sport ocean fishing license, two dollars and fifty cents ($2.50). Sport fishing licenses issued pursuant

to paragraph (4) of subdivision (a) of Section 7149 are not subject to this requirement.

(2) A stamp for each single day sport ocean fin fishing license issued pursuant to subdivision (c) of Section 7149, fifty cents ($0.50). Sport fishing licenses issued pursuant to paragraph (4) of subdivision (a) of Section 7149 are not subject to this requirement.

(b) In addition to a valid California commercial passenger fishing boat license issued pursuant to Section 7920, the owner of any boat or vessel who, for profit, permits any person to fish therefrom, south of a line extending due west from Point Arguello, shall have a valid commercial ocean fishing enhancement stamp issued for that vessel that has not been suspended or revoked.

(c) Any person who takes, possesses aboard a boat, or lands any white sea bass for commercial purposes, south of a line extending due west from Point Arguello, shall have a valid commercial ocean fishing enhancement stamp issued to that person that has not been suspended or revoked.

(d) The fee for a commercial ocean fishing enhancement stamp shall be twenty-five dollars ($25).

SEC. 2. Section 7852.27 of the Fish and Game Code is amended to read:

7852.27. At all times when engaged in any activity described in Section 7850 or Article 7 (commencing with Section 8030) for which a commercial fishing license is required, the licensee shall have in his or her possession, or immediately available to the licensee, a valid driver's license or identification card issued by the Department of Motor Vehicles or by the entity issuing driver's licenses from the licensee's state of domicile.

SEC. 3. Section 7857 of the Fish and Game Code is amended to read:

7857. Unless otherwise specified, the following conditions apply to each commercial fishing license, permit, or other entitlement issued to take, possess aboard a boat, or land fish for commercial purposes and to each commercial boat registration issued by the department, except licenses issued pursuant to Article 7 (commencing with Section 8030):

(a) The person to whom a commercial fishing permit or other entitlement is issued shall have a valid commercial fishing license issued pursuant to Section 7852 that is not revoked or suspended.

(b) The commission, after notice and opportunity for hearing, may suspend, revoke, or cancel commercial fishing privileges for a period of time to be determined by the commission for the following reasons:

(1) The person was not lawfully entitled to be issued the license, permit, or other entitlement.

(2) A violation of this code, the terms of the permit or other entitlement, or the regulations adopted pursuant thereto, by the licensee, permittee, person holding the entitlement, or his or her

agent, servant, employee, or person acting under the licensee's, permittee's, or entitled person's direction or control.

(3) A violation of any federal law relating to the fishery for which the license, permit, or other entitlement was issued by the licensee, permittee, person holding the entitlement, or his or her agent, servant, employee, or person acting under the licensee's, permittee's, or entitled person's direction or control.

(c) The person to whom the commercial fishing license, permit, or other entitlement is issued shall be present when fish are being taken, possessed aboard a boat, or landed for commercial purposes. This subdivision does not apply to commercial fishing vessel permits or licenses.

(d) The commercial fishing license, permit, or other entitlement shall be in the licensee's, permittee's, or entitled person's possession, or immediately available to the licensee, permittee, or entitled person at all times when engaged in any activity for which the commercial fishing license, permit, or entitlement is required.

(e) Not more than one individual commercial fishing license, permit, or other entitlement of a single type shall be issued to an individual person and not more than one commercial vessel fishing license, permit, or other entitlement of a single type shall be issued for each vessel.

(f) Any landing of fish used to qualify for, or renew, a commercial fishing license, permit, or other entitlement shall be reported on landing receipts delivered to the department pursuant to Section 8046.

(g) In addition to any other requirements in Article 7.5 (commencing with Section 8040), the name of the person issued the commercial fishing license, permit, or other entitlement authorizing the taking of the fish shall be included on the landing receipt for that landing.

(h) An application for a commercial fishing license, permit, or other entitlement shall be made on a form containing the information the department may require. The commercial fishing license, permit, or other entitlement shall be signed by the holder prior to use.

(i) Any person who has had a commercial fishing license, permit, or other entitlement suspended or revoked shall not engage in that fishery, and shall not obtain any other commercial fishing license, permit, or other entitlement that authorizes engaging in that fishery, while the suspension or revocation is in effect.

(j) A commercial fishing license, permit, or other entitlement is not transferable unless otherwise expressly specified in this code.

(k) Every commercial fishing license, permit, stamp, commercial boat registration, or other entitlement issued pursuant to this part, except commercial fish business licenses issued pursuant to Article 7 (commencing with Section 8030), is valid from April 1 to March 31

of the next following calendar year or, if issued after the beginning of that term, for the remainder thereof.

(*l*) A person who holds a commercial fishing vessel permit or other entitlement authorizing the use of a vessel for commercial fishing shall also hold a valid commercial boat registration for that vessel, issued pursuant to Section 7881, that has not been suspended or revoked.

(m) A person who holds a commercial fishing license, permit, registration, or other entitlement, who moves or acquires a new address shall notify the department of the old and new addresses within three months of acquiring the new address.

SEC. 4. Section 7858 of the Fish and Game Code is amended to read:

7858. In addition to the conditions specified in Section 7857, the following conditions apply to a commercial permit to take, possess aboard a boat, or land fish for commercial purposes in a limited entry fishery, as defined in Section 8100:

(a) The permit shall be renewed annually.

(b) Except as otherwise provided by law, an appeal for the denial of a renewal application or for a waiver of any landing requirements shall be reviewed and decided by the department. The appeal shall be received by the department or, if mailed, postmarked on or before March 31 following the permit year in which the applicant last held a valid permit for that fishery. The decision of the department may be appealed to the commission. This section does not apply to permits issued pursuant to Section 8550.

SEC. 5. Section 8233.1 of the Fish and Game Code is repealed.

SEC. 6. Section 8246.6 of the Fish and Game Code is amended to read:

8246.6. A person whose commercial salmon fishing vessel permit is revoked by the commission or who has been denied a permit transfer may appeal the revocation or denial to the commission by submitting the appeal in writing to the commission within 60 days of the decision.

SEC. 7. Section 8405.1 of the Fish and Game Code is amended to read:

8405.1. (a) To qualify for a sea cucumber permit for the permit year of April 1, 1997, to March 31, 1998, inclusive, an applicant shall have landed a minimum of 50 pounds of sea cucumbers during any calendar year, or portion thereof, from January 1, 1988, to June 30, 1991, inclusive.

(b) All applications for sea cucumber permits shall be received by the department, or, if mailed, postmarked, by June 30, 1997.

(c) The department shall not issue a sea cucumber permit until the applicant's eligibility pursuant to this section has been verified by the department through either landing receipts or other documentation used by the department.

(d) Applicants for a sea cucumber permit shall specify by gear type, either trawl or dive, the method in which the applicant intends to take sea cucumbers. The gear type of a sea cucumber permit, either trawl or dive, shall not be transferable.

(e) The fee for a sea cucumber permit shall be two hundred fifty dollars ($250).

(f) Each permittee shall complete and submit an accurate record of all sea cucumber fishing activities on forms provided by the department.

(g) In order to renew a sea cucumber permit for any permit year commencing on or after April 1, 1998, an applicant shall have been issued a sea cucumber permit in the immediately preceding permit year. Applications for renewal of a sea cucumber permit shall be received by the department or, if mailed, postmarked, by June 30 of the permit year.

SEC. 8. Section 8255 of the Fish and Game Code is repealed.

SEC. 9. Section 8561.5 of the Fish and Game Code is amended to read:

8561.5. (a) Notwithstanding Section 8102, a permit issued pursuant to Section 8561 may be transferred by the permittee only if one of the following conditions is met:

(1) The permittee has held the permit for three or more years.

(2) The permittee is permanently injured or suffers a serious illness that will result in a hardship, as determined in a written finding by the director, to the permittee or his or her family if the permit may not otherwise be transferred or upon dissolution of a marriage where the permit is held to be community property.

(3) The permittee has died and his or her surviving spouse, heirs, or estate seeks to transfer the permit within six months of the death of the permittee or, with the written approval of the director, within the length of time that it may reasonably take to effect the transfer.

(b) A permit may be transferred only to a person who holds a valid general gill net permit issued to that person pursuant to Section 8681 that has not been suspended or revoked.

(c) The transfer of a permit shall only become effective upon notice from the department. An application for transfer shall be submitted to the department with such reasonable proof as the department may require to establish the qualification of the person the permit is to be transferred to, the payment to the department of a transfer fee of one thousand five hundred dollars ($1,500), and a written disclosure, filed under penalty of perjury, of the terms of the transfer.

(d) Any restrictions on participation that were required in a permit transferred pursuant to Section 8102 before January 1, 1990, are of no further force or effect.

SEC. 10. Section 8562 of the Fish and Game Code is amended to read:

8562. Applications delivered to a department office after April 30, or if mailed, postmarked after April 30, shall not be accepted unless approved by the commission pursuant to Section 8569.

SEC. 11. Section 8568 of the Fish and Game Code is amended to read:

8568. Drift gill net shark and swordfish permits shall be issued to any prior permittee who possesses a valid drift gill net shark and swordfish permit issued pursuant to this section, but only if the permittee meets all of the following requirements:

(a) Possesses a valid permit for the use of gill nets authorized pursuant to Section 8681.

(b) Possessed a valid drift gill net shark and swordfish permit during the preceding season and that permit was not subsequently revoked.

(c) During one of the two immediately preceding permit years, either landed at least 2,500 pounds of swordfish or 1,000 pounds of shark or landed shark or swordfish for which the permittee was paid at least one thousand dollars ($1,000).

SEC. 12. Section 8569 of the Fish and Game Code is amended to read:

8569. (a) Any person who possessed a valid drift gill net shark and swordfish permit during the preceding season and whose application has been denied because the permittee failed to meet the landing requirements specified in subdivision (c) of Section 8568, may appeal to the commission, submitting circumstances surrounding nonuse of the permit and request a waiver of the landing requirement. The commission may authorize issuance of the permit to the applicant if it finds the nonuse of the permit during the preceding season was for reasons beyond the control of the applicant under the circumstances.

(b) The commission may establish conditions for the issuance of a permit if the person's drift gill net shark and swordfish permit was revoked during a preceding season or if the person possessed a valid permit during the preceding season but did not apply for renewal of his or her permit on or before April 30. The applicant for a permit under this subdivision may appeal to the director for the issuance of the permit under those conditions.

SEC. 13. Section 9000 of the Fish and Game Code is amended to read:

9000. (a) Except as expressly authorized in this article, no person shall use a trap to take any finfish, mollusk, or crustacean in the waters of this state for commercial purposes.

(b) Traps, which are authorized to be used under this article, may be used to take finfish in ocean waters.

(c) Freshwater baitfish traps may be used as provided in Section 8463, and that use is not subject to this article.

SEC. 14. Section 9001.5 of the Fish and Game Code is amended to read:

9001.5. (a) Finfish, other than hagfish, shall not be taken with traps for commercial purposes in ocean waters between a line extending due west true from Point Arguello in Santa Barbara County and the United States-Mexico international boundary line except under a valid finfish trap permit issued to the person that has not been suspended or revoked. At least one person aboard each commercial fishing vessel shall have a valid finfish trap permit. Notwithstanding Section 9001, a finfish trap permitholder is not required to obtain or possess a valid general trap permit when taking finfish with traps. Any person who assists in the taking of finfish with traps shall have either a finfish trap permit or a valid general trap permit.

(b) A finfish trap permit shall only be issued to a person who held a finfish trap permit to take finfish during the immediately preceding permit year that has not been suspended or revoked and who landed at least 50 pounds of finfish, other than hagfish, taken in finfish traps as reported on one or more fish landing receipts during the immediately preceding permit year. Applications for renewal of a finfish trap permit shall be received by the department, or, if mailed, postmarked, by May 31 of each year.

SEC. 15. Section 9001.6 of the Fish and Game Code is amended to read:

9001.6. (a) A finfish trap permit issued pursuant to Section 9001.5 authorizes finfish to be taken with finfish traps only subject to the following limitations:

(1) No lobster may be possessed aboard or landed from any vessel for commercial purposes on which finfish are also present unless at least one person on board has a valid finfish trap permit issued to that person pursuant to Section 9001.5 that has not been suspended or revoked and every person on board has a valid lobster permit issued pursuant to Section 8254 that has not been suspended or revoked and is in compliance with this article and Article 5 (commencing with Section 8250) of Chapter 2 and the regulations adopted pursuant to these articles. Lobster may not be used as bait in finfish traps, and any lobster found in finfish traps that may not be possessed pursuant to this article or Article 5 (commencing with Section 8250) of Chapter 2 shall be returned to the water immediately.

(2) During the period from one hour after sunset to one hour before sunrise finfish traps that are left in the water shall be unbaited with the door secured open. However, if, for reasons beyond the control of the permittee, all trap doors cannot be secured open prior to one hour after sunset, the permittee shall immediately notify the department.

(3) Timed buoy release mechanisms commonly termed "popups" may not be used on buoy lines attached to finfish traps.

(4) Trap destruction devices used on finfish traps shall conform to the current requirements for those devices adopted by the commission.

(5) No finfish traps may be within 750 feet of any pier, breakwall, or jetty in District 19, 19A, 19B, 20, 20A, 20B, or 21.

(6) Not more than 50 finfish traps may be used in state waters along the mainland shore.

(7) The mesh of any finfish trap shall measure two inches by two inches.

(b) The fee for the finfish trap permit issued pursuant to Section 9001.5 is one hundred ten dollars ($110).

(c) Under a general trap permit issued pursuant to Section 9001, Korean traps, defined as molded plastic cylinders not exceeding 6 inches in diameter and 24 inches in length, or "bucket traps" constructed of plastic buckets of five gallons or less in capacity, may be used to take only hagfish for commercial purposes. The number of traps that may be possessed on board a vessel and in the water for the purposes of taking hagfish shall not exceed 500 Korean traps or 200 bucket traps. No permittee may possess both Korean traps and other types of traps aboard a vessel at the same time. When Korean traps or bucket traps are being used or possessed aboard a boat, no species of finfish other than hagfish shall be taken, possessed aboard a boat, or sold for commercial purposes.

(d) This section shall become inoperative on April 1, 2002, and as of January 1, 2003, is repealed, unless a later enacted statute, which is enacted before January 1, 2003, deletes or extends that date.

SEC. 16. The amendments made by this act to subdivisions (a) and (b) of Section 9001.6 of the Fish and Game Code do not constitute a change in, but are declaratory of, existing law.

SEC. 17. 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 526

An act to add Sections 3068 and 3070 to the Penal Code, relating to parole, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 15, 1998. Filed with Secretary of State September 16, 1998.]

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

SECTION 1. The Legislature finds and declares that there is a critical need to address all of the following:

(a) The current high recidivism rate of parolees released from the Department of Corrections.

(b) The high cost and operational difficulties for the criminal justice system and the prison system, and the cost to victims of crime as a result of recidivism.

(c) The already severe overcrowding in the prison system and the projections by the Department of Corrections that the state will run out of space for inmates early in the year 2000, and is short by more than 70,000 the number of beds needed over the next 10 years.

(d) The decision, taken by the Department of Corrections on its own initiative, to begin the pilot program known as Preventing Parolee Failure (PPF) to provide residential and nonresidential multiservice centers, literacy labs, drug treatment networks, and job placement assistance for parolees.

(e) The conclusion by the Department of Corrections, in the May 1, 1997, report to the Legislature, that the PPF program results in net state savings of seventy-four million dollars ($74,000,000) and 11,000 prison beds over a five-year period.

(f) The conclusion by the Legislative Analyst's office that expansion of the PPF program would result in two dollars ($2) to three dollars ($3) in savings for every additional one dollar ($1) invested by the state.

(g) The fact that some geographic areas of the state are now lacking PPF services provided successfully in other geographic areas of California.

SEC. 2. Section 3068 is added to the Penal Code, to read:

3068. (a) The Department of Corrections shall operate the Preventing Parolee Crime Program with various components, including, at a minimum, residential and nonresidential multiservice centers, literacy labs, drug treatment networks, and job placement assistance for parolees.

(b) The Department of Corrections shall, commencing in the 1998–99 fiscal year, initiate an expansion of the program to parole units now lacking some or all of the elements of the program, where doing so would be cost-effective, as determined by the Director of Corrections, to the extent that funding for the expansion becomes available.

(c) In addition to the assignment by the Department of Corrections of any other parolee to the Preventing Parolee Crime Program, the parole authority may assign a conditionally released or paroled prisoner to the Preventing Parolee Crime Program in lieu of the revocation of parole. The parole authority shall not assign a conditionally released or paroled prisoner to the Preventing Parolee Crime Program in lieu of the revocation of parole if the person has

committed a parole violation involving a violent or serious felony. A special condition of parole that requires the parolee to participate in a live-in program shall not be imposed without a hearing by the Board of Prison Terms.

(d) (1) The Department of Corrections, in consultation with the Board of Prison Terms and the Legislative Analyst's office, shall, contingent upon funding, contract with an independent consultant to conduct an evaluation regarding the impact of an expansion of the Preventing Parolee Crime Program to additional parole units on public safety, parolee recidivism, and prison and parole costs, and report the results to the Legislature on or before January 1, 2004.

(2) The Department of Corrections shall sample several parole units in which the program has been added to examine the program's impact upon the supervision, control, and sanction of parolees under the jurisdiction of the sampled parole units. These results shall be compared with a control group of comparable parole populations that do not have Preventing Parolee Crime Program services.

(3) The report, whether in final or draft form, and all working papers and data, shall be available for immediate review upon request by the Legislative Analyst.

(4) The department in consultation with the Board of Prison Terms shall submit a multiyear evaluation plan for the program to the Legislature six months after an appropriation is made for the evaluation provided for in paragraph (1).

SEC. 3. Section 3070 is added to the Penal Code, to read:

3070. The Department of Corrections shall develop and report, utilizing existing resources, to the Legislature by December 31, 2000, a plan that would ensure by January 1, 2005, that all prisoners and parolees who are substance abusers receive appropriate treatment, including therapeutic community and academic programs. The plan shall include a range of options, estimated capital outlay and operating costs for the various options, and a recommended prioritization, including which persons shall receive priority for treatment, for phased implementation of the plan.

SEC. 4. The sum of three million fifty thousand dollars ($3,050,000) is hereby appropriated from the General Fund to the Department of Corrections, for allocation in accordance with the following schedule:

(a) Two million eight hundred thousand dollars ($2,800,000) for the purposes of expanding the Preventing Parolee Crime Program pursuant to subdivision (b) of Section 3068 of the Penal Code.

(b) Two hundred fifty thousand dollars ($250,000) for the purposes of providing for the independent evaluation of expansion of the Preventing Parolee Crime Program pursuant to subdivision (d) of Section 3068 of the Penal Code.

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 reduce the high recidivism rate of parolees released from the Department of Corrections prisons, it is necessary that this act take effect immediately.

CHAPTER 527

An act to amend Section 48903 of the Education Code, relating to pupil discipline.

[Approved by Governor September 16, 1998. Filed with Secretary of State September 17, 1998.]

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

SECTION 1. Section 48903 of the Education Code is amended to read:

48903. (a) Except as provided in subdivision (g) of Section 48911 and in Section 48912, the total number of days for which a pupil may be suspended from school shall not exceed 20 schooldays in any school year, unless for purposes of adjustment, a pupil enrolls in or is transferred to another regular school, an opportunity school or class, or a continuation education school or class, in which case the total number of schooldays for which the pupil may be suspended shall not exceed 30 days in any school year.

(b) For the purposes of this section, a school district may count suspensions that occur while a pupil is enrolled in another school district toward the maximum number of days for which a pupil may be suspended in any school year.

CHAPTER 528

An act to amend Section 4701 of, and to add Section 97.361 to, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 16, 1998. Filed with Secretary of State September 17, 1998.]

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

SECTION 1. Section 97.361 is added to the Revenue and Taxation Code, to read:

97.361. Any reduction amount determined for a county pursuant to subdivision (a) of Section 97.36 that is not applied to the benefit

of that county in that county's designated fiscal year, as defined in Section 97.36, may not be so applied in a later fiscal year, regardless of any increase in the amount of revenues allocated in that county to qualifying school entities as a result of the county's adoption of the alternate procedure for the distribution of property tax levies authorized by Chapter 2 (commencing with Section 4701) of Part 8.

SEC. 2. Section 4701 of the Revenue and Taxation Code is amended to read:

4701. (a) The Legislature hereby finds and declares that it is the purpose of this chapter to provide an alternative procedure for the distribution of property tax levies on the secured roll made by counties on their own behalf or as the tax-levying and tax-collecting agency for other political subdivisions. The Legislature further finds and declares that the object of this alternative procedure is to simplify the tax-levying and tax-apportioning process and to increase flexibility in the use of available cash resources.

(b) For purposes of this chapter only, the term "secured roll" may include the supplemental property tax roll as described in Chapter 3.5 (commencing with Section 75) of Part 0.5 of Division 1.

CHAPTER 529

An act to amend Section 861.1 of the Code of Civil Procedure, relating to validating proceedings.

[Approved by Governor September 16, 1998. Filed with Secretary of State September 17, 1998.]

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

SECTION 1. Section 861.1 of the Code of Civil Procedure is amended to read:

861.1. The summons shall be directed to "all persons interested in the matter of [specifying the matter]," and shall contain a notice to all persons interested in the matter that they may contest the legality or validity of the matter by appearing and filing a written answer to the complaint not later than the date specified in the summons, which date shall be 10 or more days after the completion of publication of the summons. The summons shall provide a detailed summary of the matter the public agency or other person seeks to validate. The summons shall also state that persons who contest the legality or validity of the matter will not be subject to punitive action, such as wage garnishment or seizure of their real or personal property. Except as otherwise specified in this section the summons shall be in the form prescribed in Section 412.20.

CHAPTER 530

An act to amend Sections 987.65, 987.69, 987.71, 987.76, 1000.2, 1003.4, 1003.14, 1003.16, 1004.1, 1004.2, and 1004.4 of, and to repeal Sections 1003.5 and 1003.9 of, the Military and Veterans Code, relating to veterans, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 16, 1998. Filed with Secretary of State September 17, 1998.]

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

SECTION 1. Section 987.65 of the Military and Veterans Code is amended to read:

987.65. (a) The purchase price of a home to the department, or the sum to be expended by the department pursuant to a contract for the construction of a dwelling house and other improvements, or the purchase price of a mobilehome sited on a lot owned by the purchaser and installed on a foundation system pursuant to Section 18551 of the Health and Safety Code, or the purchase price of a mobilehome converted to a fixture and improvement to the underlying real property in a mobilehome park that has been converted to a resident-owned subdivision, cooperative, condominium, or nonprofit corporation as set forth in Section 18555 of the Health and Safety Code, shall not exceed two hundred fifty thousand dollars ($250,000).

(b) The purchase price of a mobilehome that is to be sited in a mobilehome park, as defined in Section 18214 of the Health and Safety Code, in addition to any assistance provided by the department to a veteran pursuant to subdivision (e) of Section 987.85, shall not exceed seventy thousand dollars ($70,000).

(c) A veteran purchasing the home may advance, subject to Section 987.64, the difference between the total price or cost of the home and the sum of the purchase price of the home to the department and any amount the department adds, under Section 987.69, to the purchase price of the home in fixing the selling price to the veteran. Any amount of the purchase price to the department may be provided by funds from participation contracts or revenue bonds.

(d) The purchase price of a farm to the department shall not exceed three hundred thousand dollars ($300,000). A veteran purchasing the farm may advance the difference between the total price of the farm, or the cost of the dwelling and improvements to be constructed on a farm under a contract, and the sum of the purchase price to the department or contract price to the department and any amount that the department adds, under

Section 987.69, to the purchase or contract price to the department in fixing the selling price of the farm to the veteran.

SEC. 2. Section 987.69 of the Military and Veterans Code is amended to read:

987.69. The department shall then enter into a contract with the veteran for the sale of the property to the veteran. The department shall fix the selling price of the property as the purchase price thereof, as the total cost of improvements constructed, or as the value of the property, as determined by the department when the property is acquired by the department in a manner other than by purchase, to which the department may add all expenses incurred and estimated to be incurred by the department in relation thereto, inclusive of interest, administration, appraisals, examination of title, insurance premiums, mortgage guaranty fees, origination fees, incidental expenses, and the sum deemed necessary to meet unforeseen contingencies. In the case of real property acquired for the purpose of constructing improvements thereon, the department shall forthwith after acquiring that real property enter into the contract with the veteran authorized by this section at a selling price that does not exceed the department's appraised value of the land, if the loan is to include the value of the land, and the amount of the department's appraised value of the improvements to be constructed thereon and any of the other additions herein authorized. After the execution of the contract between the veteran and the department and the making of the initial payment thereon the department shall be authorized to pay the cost of the improvements contracted to be constructed on the real property, making progress payments thereon in the amounts and at those times that the department approves. The department shall, upon written request of the veteran and his or her contractor, have authority to approve additions to or deletions from the improvements contracted to be constructed and any savings affected or added cost incurred shall be deducted from or added to the amount due the department by the veteran under the terms of his or her contract.

Where the department enters into a contract for the sale of property on trust to an Indian veteran, the contract shall include the following conditions:

(a) The dwelling house or other improvements contracted to be constructed on trust land shall be completed in compliance with the standards of the building code applicable on the trust land. If there is no building code in force on the trust land, the applicable standards shall be those of the building code of the county in which the trust land is located.

(b) On the completion of construction, the Indian veteran shall provide to the department an inspection certificate from a qualified building inspector certifying that the dwelling house or other improvements comply with the standards of the building code as required by subdivision (a).

SEC. 3. Section 987.71 of the Military and Veterans Code is amended to read:

987.71. (a) The purchaser shall make an initial payment of at least 2 percent of the selling price of the property. The department may waive the initial payment in any case where the value of the property as determined by the department from an appraisal equals the amount to be paid by the department plus at least 5 percent. In the case of a purchase requiring a loan guaranty by the United States Department of Veterans Affairs, the purchaser shall pay the loan guaranty fee, which may be added to the loan amount. The department may require the purchaser to pay a loan origination fee, not to exceed 1 percent of the loan amount, which may be added to the loan amount.

(b) The balance of the loan amount may be amortized over a period fixed by the department, not exceeding 40 years for farms or homes and not exceeding 30 years for mobilehomes located in mobilehome parks, as defined in Section 18214 of the Health and Safety Code, together with interest thereon at the rate determined by the department pursuant to Section 987.87 for these amortization purposes.

(c) The department may, in order to allow the veteran to purchase the home selected without incurring excessive monthly payments, at the time of initial purchase, postpone the commencement of payment of the principal balance for not to exceed five years if the veteran's current income meets the standards for purchase on these terms and if the department determines, in accordance with previously established criteria for these determinations, that the veteran's income can reasonably be expected to increase sufficiently within the five-year period to make the transition to fully amortized principal and interest payments, so long as the total term of the contract of purchase does not exceed 40 years, or 30 years where the contract relates to a mobilehome located in a mobilehome park, as defined in Section 18214 of the Health and Safety Code.

(d) The purchaser on any installment date may pay any or all installments still remaining unpaid.

(e) In any individual case, the department may for good cause postpone, from time to time, upon terms the department determines to be proper, the payment of the whole or any part of any installment of the purchase price or interest thereon.

(f) Each installment shall include an amount sufficient to pay the principal and interest on the participation contract to which the interest of the department is subject, and any amount as may be required by a covenant or provision contained in any resolution of issuance.

(g) When a purchaser makes an initial payment of less than 20 percent of the selling price of the property, the department shall do all of the following:

(1) Take prudent measures to minimize losses from loan defaults and loan delinquencies.

(2) (A) Ensure the continued financial solvency of the loan program by charging fees to cover the costs, as determined by the department, of any loan guaranty, primary mortgage insurance, or other similar arrangement.

(B) Fees charged under this paragraph may be included in the amount of the loan, collected in advance, or collected as part of the monthly payment.

SEC. 4. Section 987.76 of the Military and Veterans Code is amended to read:

987.76. Notwithstanding Section 6157 of the Government Code, the department shall be the sole judge of all of the following:

(a) The legality or validity of taxes, assessments, charges, insurance premiums, guaranty fees, or encumbrances, and the amount necessary to be paid in satisfaction or discharge thereof.

(b) The amount of insurance to be placed upon the buildings, fences, other permanent improvements, and crops and the amount necessary to be paid for the premiums for that insurance.

(c) The necessity and nature of the work required to keep the buildings, fences, and other improvements in good order and repair, and the amount to be paid therefor.

(d) The amount of loan insurance or guaranty to be placed upon the veteran's liability for repayment of the veteran's contract and the amount necessary to be paid by the veteran or the department for the premiums or fees for that insurance or guaranty.

SEC. 5. Section 1000.2 of the Military and Veterans Code is amended to read:

1000.2. The following terms, wherever used or referred to in this chapter, shall have the following meanings, respectively, unless a different meaning appears from the context:

(a) "Department" means the Department of Veterans Affairs of the State of California, as the same is constituted by the provisions of Section 63 of this code, and any successor to that office.

(b) "Veterans' Debenture Finance Committee" means the committee constituted pursuant to the provisions of Section 1000.3 of this code.

(c) "Debenture" means any written evidence of any obligation issued by the department pursuant to this chapter for the financing of programs of the department, or for the refinancing of obligations issued by the department or by the state for those programs, payment of which is secured by a pledge of revenues, as provided in this chapter, irrespective of the form of the obligation.

(d) "Debenture holder" means any person who shall be the bearer of any outstanding debenture registered to bearer not registered, or the registered owner of any outstanding debenture which shall at the time be registered other than to bearer.

(e) "Veteran" shall have the meaning set forth in Section 980 of this code.

(f) "Pledged contracts" means contracts of sale entered into by the department and veterans covering any property purchased or acquired by the department from the proceeds of debentures as may be provided in any resolution of issuance and to the extent therein provided.

(g) "Surplus money" means funds not required to meet any immediate demand which has accrued against the Veterans' Farm and Home Building Fund of 1943 without regard to fiscal years.

(h) "Revenues" means all income and receipts of the department from the pledged contracts, including, without limiting the generality of the foregoing, all payments received in account of the selling price, interest thereon, expenses and all other charges added to the selling price, insurance proceeds collected on account of loss, damage or injury to the property, life insurance or disability insurance proceeds received by the department, and all other receipts of whatsoever kind or nature arising out of or incident to the pledged contracts.

The term "revenues" also includes all interest or other income from any investment of any moneys in any fund established under a resolution of issuance for the payment of the principal of, or interest or premium on, debentures.

(i) "Resolution of issuance" means a resolution of the department, approved by the Veterans' Debenture Finance Committee, pursuant to which debentures are issued, and any amendatory or supplemental resolutions.

(j) "Person" means any individual, firm, corporation, association, partnership, limited liability company, trust, business trust, or receiver or trustee or conservator for any thereof, but does not include this state or any public corporation, political subdivision, city, county, district or agency of this state.

SEC. 6. Section 1003.4 of the Military and Veterans Code is amended to read:

1003.4. The department shall at all times, so long as any of the debentures are outstanding, establish, fix, and collect interest at the rate or rates, which may be fixed interest rates or variable interest rates, on the unpaid balance on all pledged contracts to produce an amount that, together with income derived from investments, will yield revenues that will, in the aggregate, be sufficient with respect to the then immediately ensuing fiscal year to pay and provide for all of the following:

(a) Interest to become due and payable in that fiscal year on all debentures.

(b) The principal amount of all serial debentures maturing by their terms during that fiscal year.

(c) The aggregate minimum sinking fund payments, if any, required to be made for that fiscal year on account of debentures then outstanding.

(d) Those sums as may be required as reserve fund payments due in that fiscal year.

(e) The estimated expenses of maintenance, operation, and administration of the department as provided in the budget of the department for that fiscal year.

SEC. 7. Section 1003.5 of the Military and Veterans Code is repealed.

SEC. 8. Section 1003.9 of the Military and Veterans Code is repealed.

SEC. 9. Section 1003.14 of the Military and Veterans Code is amended to read:

1003.14. Debentures authorized under any resolution of issuance approved by the Veterans' Debenture Finance Committee shall be sold by the State Treasurer upon the written request of the department at public or private sale, as determined by the department with the approval of the Veterans' Debenture Finance Committee, and at those times and in those amounts that the department deems necessary to provide sufficient funds for the purposes for which the debentures are then authorized. Successive issues of debentures within the limits of the authorization for the issuance of debentures, if any of those limitations are included in the proceedings for the issuance of the debentures, shall be equally and regularly secured without preference, priority or distinction as to security or otherwise by reason of time of issue, or sale, except as debentures of various series may differ with respect to dates, numbers, interest rates, maturity, redemption provisions, sinking fund provisions, or otherwise as expressly authorized in any resolution of issuance.

SEC. 10. Section 1003.16 of the Military and Veterans Code is amended to read:

1003.16. (a) Notwithstanding any other provision of this chapter, and in lieu of a pledge of revenues as security for any debentures issued pursuant to this chapter, the department may assign or pledge an undivided interest in the assets of the Veterans' Farm and Home Building Fund of 1943 as security for the debentures. Undivided interest so assigned or pledged shall not exceed the amount of principal and interest of the debentures secured thereby, and shall be secondary and subordinate to any interest or right of the people and the holders of general obligation bonds in the fund under any general obligation veterans bond act.

(b) In that event, the department shall deposit the proceeds of the sale of the debentures and the revenues therefrom in the Veterans' Farm and Home Building Fund of 1943, and money may be withdrawn therefrom in accordance with law upon requisition of the department for the purpose of carrying out the provisions of this

chapter and of the Veterans' Farm and Home Purchase Act of 1943 and the Veterans' Farm and Home Purchase Act of 1974. The department may create any accounts or funds within the Veterans' Farm and Home Building Fund of 1943 and the Veterans' Debenture Revenue Fund that may be appropriate or desirable for carrying out the provisions of this section.

(c) Further, in that event, and notwithstanding Section 1006.15, the interest rates on veterans' purchase contracts shall be established as provided in Section 987.87.

SEC. 11. Section 1004.1 of the Military and Veterans Code is amended to read:

1004.1. The department, subject to the approval of the Veterans' Debenture Finance Committee, may provide for the issuance, sale, or exchange of refunding debentures for the purpose of redeeming or retiring any debentures issued under this chapter or any obligations issued by the state to finance programs of the department. All provisions of this chapter applicable to the issuance of debentures are applicable to the funding or refunding debentures and to the issuance, sale or exchange thereof. The department with the approval of the Veterans' Debenture Finance Committee may adopt a resolution or resolutions of issuance or supplemental resolutions authorizing the issuance of refunding debentures and fixing the terms and conditions thereof.

SEC. 12. Section 1004.2 of the Military and Veterans Code is amended to read:

1004.2. Refunding debentures may be issued in a principal amount sufficient to provide funds for the payment of all debentures or obligations to be refunded thereby and in addition to the payment of all expenses incident to the calling, retiring or paying of outstanding debentures or obligations and the issuance of refunding debentures. Those expenses include any amount necessary to be made available for the payment of interest upon refunding debentures from the date of sale thereof to the date of payment of the debentures or obligations to be refunded, or to the date upon which the debentures or obligations to be refunded will be paid pursuant to the call thereof or agreement with the holders thereof, and the premium, if any, necessary to be paid in order to call or retire the outstanding debentures or obligations and the interest accruing thereon to the date of the call or retirement.

SEC. 13. Section 1004.4 of the Military and Veterans Code is amended to read:

1004.4. The department may from time to time or at any time sell or exchange refunding debentures for the purpose of retiring, paying or refunding either all or part of the outstanding debentures or obligations, or of one or more series thereof, as it deems advisable. Refunding debentures may be issued and delivered as outstanding debentures or obligations to be refunded thereby, if the debentures are mature or are about to mature or are subject to call or

redemption, or if the retirement thereof has been assured by consent of the holders thereof. Refunding debentures may be delivered in whole or in part in exchange for outstanding debentures or obligations with the consent of the holders thereof.

SEC. 14. Section 8 of this act, which repeals Section 1003.9 of the Military and Veterans Code, shall become operative only if Assembly Bill 2097 of the 1997–98 Regular Session is enacted and becomes operative.

SEC. 15. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the Department of Veterans Affairs to enable more veterans to obtain loans under the Farm and Home Purchase Act of 1974, to make necessary technical changes with respect to the Cal-Vet loan program, and to ensure that the solvency of the Farm and Home Building Fund of 1943 is preserved, at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 531

An act to amend Section 2001 of, to repeal Sections 3081, 3083, 3084, and 3085 of, and to repeal and add Section 3080 of, the Fish and Game Code, relating to wildlife.

[Approved by Governor September 16, 1998. Filed with Secretary of State September 17, 1998.]

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

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Requiring a licensed sport hunter to obtain a permit to possessgame birds or mammals during the closed season is duplicative of other existing hunting requirements.

(2) The requirement that a sport hunter obtain and possess a hunting license and validated license tags achieves the same degree of accountability for law enforcement purposes as does the meat permit requirement and it provides the same protection against illegal possession of game birds and mammals.

(b) Therefore, it is the intent of the Legislature that the game meat permit requirement be repealed.

SEC. 2. Section 2001 of the Fish and Game Code is amended to read:

2001. (a) Unless otherwise provided, it is unlawful to possess fish, reptiles, or amphibia except during the open season where taken and

for 10 days thereafter; and not more than the possession limit thereof may be possessed during the period after the close of the open season.

(b) Except as provided in Section 3080, it is unlawful to possess game birds or mammals except during the open season where taken.

SEC. 3. Section 3080 of the Fish and Game Code is repealed.

SEC. 4. Section 3080 is added to the Fish and Game Code, to read:

3080. (a) For the purposes of this section, "donor intermediary" means a recipient who receives game birds or mammals from a donor to give to a charitable organization or charitable entity. A donor intermediary possessing game birds or mammals during a period other than the open season shall have the documentation described in paragraph (2) or (3) of subdivision (b). There is no required format for the documentation. Any written documentation containing the required information shall be deemed to comply with this section.

(b) The possession limit of any game bird or mammal may be possessed during a period other than the open season if one of the following conditions apply:

(1) The person has in his or her possession a hunting license and validated license tag or tags for the species possessed, or copies thereof. The license and tag or tags shall have been issued to that person for the current or immediate past license year.

(2) The person received the game bird or mammal from a person described in paragraph (1), and the recipient has a photocopy of the donor's hunting license and the applicable validated license tag or tags that has been signed and dated by the donor confirming the donation. The photocopied license and tag or tags shall be from the current or immediate past license year.

(3) The person received the game bird or mammal from a person described in paragraph (1), and the recipient has a signed and dated document confirming the donation that includes the donor's name, address, hunting license number, and applicable license tag numbers for the species possessed. The license and tag or tags shall be for the current or immediate past license year.

(c) The documentation required by subdivision (b) shall be made available to the department as described in Section 2012. Charitable organizations or charitable entities receiving and distributing game birds or mammals for charitable or humane purposes, shall maintain the documentation described in paragraph (2) or (3) of subdivision (b) for one year from the date of disposal.

(d) Nothing in this section authorizes the possession of game birds or carcasses or parts thereof contrary to regulations issued pursuant to the federal Migratory Bird Treaty Act (16 U.S.C. Sec. 703 et seq.).

SEC. 5. Section 3081 of the Fish and Game Code is repealed.

SEC. 6. Section 3083 of the Fish and Game Code is repealed.

SEC. 7. Section 3084 of the Fish and Game Code is repealed.

SEC. 8. Section 3085 of the Fish and Game Code is repealed.

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 532

An act to add Section 25144.7 to the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 16, 1998. Filed with Secretary of State September 17, 1998.]

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

SECTION 1. Section 25144.7 is added to the Health and Safety Code, to read:

25144.7. Notwithstanding this chapter, including, but not limited to, Section 25123.5, and any regulations adopted pursuant to this chapter, the draining of used fuel filters that are removed from fuel dispensers is not treatment, for purposes of this chapter, if all of the following requirements are met:

(a) The person draining the filters complies with the requirements of the air pollution control district or air quality management district , with the requirements of the State Water Resources Control Board and the California regional water quality control boards, and with the requirements of local ordinances, that apply to that activity.

(b) The drained fuels are used or otherwise managed in accordance with applicable law.

(c) The housing for the filter and the drained filter medium are managed in accordance with applicable law.

CHAPTER 533

An act to amend Section 44842 of the Education Code, relating to school employees.

[Approved by Governor September 16, 1998. Filed with Secretary of State September 17, 1998.]

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

SECTION 1. Section 44842 of the Education Code is amended to read:

44842. (a) Except as set forth in subdivision (b), if, without good cause, a probationary or permanent employee of a school district fails prior to July 1 of any school year to notify the governing board of the district of his or her intention to remain or not to remain in the service of the district, as the case may be, during the ensuing school year if a request to give such notice, including a copy of this section, shall have been personally served upon the employee, or mailed to him or her by United States certified mail with return receipt requested to his or her last known place of address, by the clerk or secretary of the governing board of the school district, not later than the preceding May 30, the employee may be deemed to have declined employment and his or her services as an employee of the district may be terminated on June 30 of that year.

(b) (1) In the case of an employee of a year-round school serving in a track that starts within 14 days of July 1, and serves in a position requiring certification qualifications, if the school district has, by April 30, requested that the employee notify the school district by June 1, of that year of his or her intention to remain or not to remain in the service of the school district for the following school year, and the employee, without good cause, fails to provide that notice, the school district may deem the employee to have declined employment and may terminate his or her services as an employee of the school district on June 30 of that year. An employee who gives notice of resignation pursuant to this paragraph after May 31, but before June 30, shall be released from his or her contract within 30 days of the employee's notice, or as soon as a replacement employee is obtained, whichever occurs first.

(2) The request for notice sent to the employee by the school district pursuant to this subdivision shall be in writing and shall, along with a copy of this section, be either personally served upon the employee, or mailed to him or her by United States certified mail with return receipt requested to his or her last known address, by the clerk or secretary of the governing board of the school district.

(c) If, without good cause, a probationary or permanent employee of a school district fails to report for duty at the beginning of the ensuing school year after having notified the governing board of the district of his or her intention to remain in the service of the district in accordance with the procedures specified above, the employee may be deemed to have declined employment and his or her services as an employee of the district may be terminated on the day following the 20th consecutive day of absence. No school district may terminate

any employee pursuant to this subdivision unless the district has specifically notified the employee, at least five days in advance, of the time and place at which the employee was to report to work, and the employee did not request or was not granted a leave of absence authorized by the governing board of the district.

This subdivision is applicable only to employees who were on leave of absence for 20 or more consecutive working days after April 30 of the previous school year.

CHAPTER 534

An act to amend and renumber Sections 7931 and 7932 of, to add Section 7931 to, to repeal Section 2887 of, and to repeal and add Section 7930 of, the Public Utilities Code, relating to telecommunications.

[Approved by Governor September 16, 1998. Filed with Secretary of State September 17, 1998.]

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

SECTION 1. Section 2887 of the Public Utilities Code is repealed.

SEC. 2. Section 7930 of the Public Utilities Code is repealed.

SEC. 3. Section 7930 is added to the Public Utilities Code, to read:

7930. The Legislature finds and declares all of the following:

(a) The explosive demand for new area codes in California requires more area codes to be established than was envisioned when this chapter and Section 2887 were enacted in 1990.

(b) Because of the advent of competition in the local telecommunications market, and a decision by the Federal Communications Commission, new area codes are established by the North American Numbering Plan Administrator in conjunction with the commission and members of the telecommunications industry.

(c) In order to eliminate potential confusion for all the parties involved in the process of establishing new area codes, the changes to this chapter enacted in the 1997–98 Regular Session include identifying "providers" in Section 7931.

(d) The "providers" specified in Section 7931 include telephone corporations and resellers that are regulated by the commission, and paging companies that are not regulated by the commission. It is necessary to include all of these entities within the term "providers" in order to effectively meet the needs of the state as they relate to the establishment of new area codes. The Legislature does not, however, by including paging companies as "providers" in Section 7931, intend to expand the jurisdiction of the commission over paging companies beyond the requirements of this chapter. The Legislature continues to recognize the status of paging companies as unregulated entities.

SEC. 4. Section 7931 is added to the Public Utilities Code, to read:

7931. (a) This chapter is applicable to telephone corporations, including resellers, and to paging companies, hereafter referred to as providers.

(b) For purposes of this chapter, "coordinator" means the "coordinator for California area code relief" as designated by the North American Numbering Council.

(c) Whenever the coordinator and providers evaluate the potential boundaries of a new area code, they shall consider rate area boundaries, municipal boundaries, communities of interest, and other appropriate criteria.

(d) When the coordinator determines the need to establish a new area code, at least 30 months prior to the projected opening of the new area code, the coordinator shall provide written notice to the commission regarding the need to establish the new area code.

(e) From the date the written notice required by subdivision (d) is received by the commission all of the following shall be done:

(1) Within three months all providers shall notify all affected customers in writing of the need to establish a new area code. Nothing in this paragraph requires a customer to receive in one bill more than one notice for each billed number.

(2) Within nine months the coordinator and the commission staff shall conduct at least one meeting for representatives of local jurisdictions to inform them of the proposed area code relief options, and to afford them the opportunity to discuss the potential impact of the proposed options. Following the local jurisdiction meeting, the coordinator and the commission staff shall conduct at least three public meetings in the affected geographical area. The public meetings are to inform members of the public about the proposed area code relief options, and to afford affected customers an opportunity to discuss the potential impact of the proposed area code relief options and measures that may be taken to mitigate any potential disruptions. The commission may order additional public meetings to be held at any time.

(3) Within 11 months the coordinator shall file the results of the area code relief planning process with the commission requesting commission approval to implement a plan. Anyone may contest the results of the area code planning process by filing a written protest with the commission not later than 60 days after the results have been filed with the commission.

(f) Unless the commission determines otherwise, at least 12 months prior to the date adopted by the commission for opening the new area code, all of the following shall be done:

(1) The coordinator shall notify the general public of the specific geographic area to be included in both the old and new area codes. The notice shall include the schedule for any transitional dialing periods required by Section 7932.

(2) Each telephone provider serving the specific geographic area included in the existing area code shall give written notice to all its affected customers about the specific geographic area that will be included in the new area code. The notice shall include the schedule for any transitional dialing periods required by Section 7932, and the prefixes that will be contained in the new area code. Nothing in this paragraph requires a customer to receive in one bill more than one notice for each billed telephone number.

(g) Within three months prior to the adopted date for opening the new area code, each provider serving the existing area code shall give written notice to its affected customers of the specific geographic boundaries of the new area code. The notice shall include the schedule for any transitional periods required by Section 7932, and the prefixes that will be contained in the new area code. Nothing in this paragraph requires a customer to receive in one bill more than one notice for each billed number.

SEC. 5. Section 7931 of the Public Utilities Code is amended and renumbered to read:

7932. (a) Whenever a provider opens a new area code, it shall do all of the following:

(1) If the new area code plan permits seven-digit dialing, provide for a transitional dialing period during which a number in the new area code, or a number in the existing area code, may be reached by dialing either the seven-digit called number, or the area code plus the seven-digit called number.

(2) Subsequent to the transitional dialing period provided in paragraph (1), if prefix codes are available, permit callers to reach a recorded announcement, without charge, that will inform the caller of the new area code when the existing area code is dialed.

(3) If the new area code plan requires 10-digit dialing within an area code, provide for any transitional dialing period or recorded announcements the commission may order.

(b) Paragraphs (1) and (2) of subdivision (a) shall no longer be operative if an authorized federal or state agency orders mandatory 10-digit dialing.

SEC. 6. Section 7932 of the Public Utilities Code is amended and renumbered to read:

7933. The rate structure of any call originating in or made to an area code shall not change with the split of an area code into two or more area codes, regardless of the number of digits dialed.

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 535

An act to amend Section 10320 of the Public Contract Code, relating to state procurement.

[Approved by Governor September 16, 1998. Filed with Secretary of State September 17, 1998.]

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

SECTION 1. Section 10320 of the Public Contract Code is amended to read:

10320. (a) The Department of General Services shall annually prepare a purchasing delegation program for district agricultural associations to be administered by the Department of Food and Agriculture and the Department of General Services pursuant to the following criteria:

(1) The Department of General Services shall annually review purchases to be included in the program and the amount of delegation for each type of purchase.

(2) The Department of General Services shall annually review with the Department of Food and Agriculture the aggregate limit for the delegation program.

(3) The Department of General Services shall annually communicate with each fair eligible for the delegation program, information relating to the procedure to be followed for using the delegation, including, but not limited to, the things included in the delegation program.

(b) The Division of Fairs and Expositions in the Department of Food and Agriculture shall include, as part of its annual expenditure review and approval process presented to the Joint Committee on Fairs Allocation and Classification, a section describing the purchasing delegation authority granted to all district agricultural associations pursuant to subdivision (a). This information shall include, but need not be limited to, the annual amount of purchasing delegation authority requested by, and delegated to, each district agricultural association.

CHAPTER 536

An act to amend Section 41851 of the Education Code, relating to education.

[Approved by Governor September 16, 1998. Filed with Secretary of State September 17, 1998.]

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

SECTION 1. Section 41851 of the Education Code is amended to read:

41851. (a) For the 1992–93 fiscal year, from Section A of the State School Fund, the Superintendent of Public Instruction shall apportion to each school district or county superintendent of schools, as appropriate, an amount computed pursuant to this section. School districts and county superintendents of schools that provide transportation services by means of a joint powers agreement, a cooperative pupil transportation program, or a consortium shall receive transportation allowances pursuant to this section.

(b) For the 1992–93 fiscal year, each school district or county office of education shall receive a home-to-school transportation apportionment equal to the transportation allowance received in the prior fiscal year reduced by the amount of the special education transportation allowance identified pursuant to Section 41851.5.

(c) For the 1993–94 fiscal year and each fiscal year thereafter, each school district or county office of education shall receive the same home-to-school transportation allowance received in the prior fiscal year, but in no event shall that home-to-school transportation allowance exceed the prior year's approved home-to-school transportation costs, increased by the amount provided in the Budget Act.

(d) For the 1993–94 and 1994–95 fiscal years, and each fiscal year thereafter, each county unified school district for which the county board of education serves as the governing board that meets all of the following criteria shall receive an additional apportionment of three hundred fifty thousand dollars ($350,000):

(1) Over 50 percent of the pupils enrolled in the school district require home-to-school transportation services.

(2) Total enrollment of the school district is less than 3,500.

(3) Total miles driven each fiscal year for home-to-school transportation exceeds 500,000.

(e) If, in any fiscal year, a county unified school district operates one or more necessary small schools pursuant to Article 4 (commencing with Section 42280) of Chapter 7 that the district did not operate in the 1994-95 fiscal year, that district shall not be eligible to receive an apportionment pursuant to subdivision (d) in that fiscal year or in any subsequent fiscal year.

(f) If a later enacted statute amends subdivision (b) of Section 42280 or amends or adds any other provision of law authorizing a county unified school district that has 3,001 or more units of average daily attendance to be designated as a small school district for the purposes of Article 4 (commencing with Section 42280) of Chapter 7, subdivision (d) shall become inoperative on the date that the later enacted statute becomes operative.

(g) Each county unified school district that receives an additional apportionment pursuant to subdivision (d) shall report, by September 1 of each year, commencing with September 1, 1995, on the amount of revenues received and the funds expended for the home-to-school transportation program in the prior fiscal year. The report shall be submitted to the fiscal committees and education policy committees of the Legislature and to the Legislative Analyst.

CHAPTER 537

An act to validate the organization, boundaries, acts, proceedings, and bonds of public bodies, and to provide limitations of time wherein actions may be commenced.

[Approved by Governor September 16, 1998. Filed with Secretary of State September 17, 1998.]

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

SECTION 1. This act may be cited as the Third Validating Act of 1998.

SEC. 2. As used in this act:

(a) "Public body" means the state and all departments, agencies, boards, commissions, and authorities of the state. "Public body" also means all counties, cities and counties, cities, districts, authorities, agencies, boards, commissions, and other entities, whether created by a general statute or a special act, including, but not limited to, the following:

Agencies, boards, commissions, or entities constituted or provided for under or pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

Air pollution control districts.

Air quality management districts.

Airport districts.

Assessment districts, benefit assessment districts, and special assessment districts of any public body.

Bridge and highway districts.

California water districts.

Citrus pest control districts.

City maintenance districts.

Community college districts.
Community development commissions.
Community facilities districts.
Community redevelopment agencies.
Community rehabilitation districts.
Community services districts.
Conservancy districts.
Cotton pest abatement districts.
County boards of education.
County drainage districts.
County flood control and water districts.
County free library systems.
County maintenance districts.
County sanitation districts.
County service areas.
County transportation commissions.
County water agencies.
County water authorities.
County water districts.
County waterworks districts.
Department of Water Resources and other agencies acting pursuant to Part 3 (commencing with Section 11100) of Division 6 of the Water Code.
Distribution districts of any public body.
Drainage districts.
Fire protection districts.
Flood control and water conservation districts.
Flood control districts.
Garbage and refuse disposal districts.
Garbage disposal districts.
Geologic hazard abatement districts.
Harbor districts.
Harbor improvement districts.
Harbor, recreation, and conservation districts.
Health care authorities.
Highway districts.
Highway interchange districts.
Highway lighting districts.
Housing authorities.
Improvement districts or improvement areas of any public body.
Industrial development authorities.
Infrastructure financing districts.
Integrated financing districts.
Irrigation districts.
Joint highway districts.
Levee districts.
Library districts.
Library districts in unincorporated towns and villages.

Local agency formation commissions.
Local health care districts.
Local health districts.
Local hospital districts.
Local transportation authorities or commissions.
Maintenance districts.
Memorial districts.
Metropolitan transportation commissions.
Metropolitan water districts.
Mosquito abatement or vector control districts.
Municipal improvement districts.
Municipal utility districts.
Municipal water districts.
Nonprofit corporations.
Nonprofit public benefit corporations.
Open-space maintenance districts.
Parking authorities.
Parking districts.
Permanent road divisions.
Pest abatement districts.
Police protection districts.
Port districts.
Project areas of community redevelopment agencies.
Protection districts.
Public cemetery districts.
Public utility districts.
Rapid transit districts.
Reclamation districts.
Recreation and park districts.
Regional justice facility financing agencies.
Regional park and open-space districts.
Regional planning districts.
Regional transportation commissions.
Resort improvement districts.
Resource conservation districts.
River port districts.
Road maintenance districts.
Sanitary districts.
School districts of any kind or class.
Separation of grade districts.
Service authorities for freeway emergencies.
Sewer districts.
Sewer maintenance districts.
Small craft harbor districts.
Stone and pome fruit pest control districts.
Storm drain maintenance districts.
Storm drainage districts.
Storm drainage maintenance districts.

Storm water districts.
Toll tunnel authorities.
Traffic authorities.
Transit development boards.
Transit districts.
Unified and union school districts' public libraries.
Vehicle parking districts.
Water agencies.
Water authorities.
Water conservation districts.
Water districts.
Water replenishment districts.
Water storage districts.
Wine grape pest and disease control districts.
Zones, improvement zones, or service zones of any public body.

(b) "Bonds" means all instruments evidencing an indebtedness of a public body incurred or to be incurred for any public purpose, all leases, installment purchase agreements, or similar agreements wherein the obligor is one or more public bodies, all instruments evidencing the borrowing of money in anticipation of taxes, revenues, or other income of that body, all instruments payable from revenues or special funds of those public bodies, all certificates of participation evidencing interests in the leases, installment purchase agreements, or similar agreements, and all instruments funding, refunding, replacing, or amending any thereof or any indebtedness.

(c) "Hereafter" means any time subsequent to the effective date of this act.

(d) "Heretofore" means any time prior to the effective date of this act.

(e) "Now" means the effective date of this act.

SEC. 3. All public bodies heretofore organized or existing under, or under color of, any law, are hereby declared to have been legally organized and to be legally functioning as those public bodies. Every public body, heretofore described, shall have all the rights, powers, and privileges, and be subject to all the duties and obligations, of those public bodies regularly formed pursuant to law.

SEC. 4. The boundaries of every public body as heretofore established, defined, or recorded, or as heretofore actually shown on maps or plats used by the assessor, are hereby confirmed, validated, and declared legally established.

SEC. 5. All acts and proceedings heretofore taken by any public body or bodies under any law, or under color of any law, for the annexation or inclusion of territory into those public bodies or for the annexation of those public bodies to any other public body or for the withdrawal or exclusion of territory from any public body or for the consolidation, merger, or dissolution of any public bodies are hereby confirmed, validated, and declared legally effective. This shall include all acts and proceedings of the governing board of any public

body and of any person, public officer, board, or agency heretofore done or taken upon the question of the annexation or inclusion or of the withdrawal or exclusion of territory or the consolidation, merger, or dissolution of those public bodies.

SEC. 6. All acts and proceedings heretofore taken by or on behalf of any public body under any law, or under color of any law, for, or in connection with, the authorization, issuance, sale, execution, delivery, or exchange of bonds of any public body for any public purpose are hereby authorized, confirmed, validated, and declared legally effective. This shall include all acts and proceedings of the governing board of public bodies and of any person, public officer, board, or agency heretofore done or taken upon the question of the authorization, issuance, sale, execution, delivery, or exchange of bonds.

All bonds of, or relating to, any public body heretofore issued shall be, in the form and manner issued and delivered, the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore awarded and sold to a purchaser and hereafter issued and delivered in accordance with the contract of sale and other proceedings for the award and sale shall be the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore authorized to be issued by ordinance, resolution, order, or other action adopted or taken by or on behalf of the public body and hereafter issued and delivered in accordance with that authorization shall be the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore authorized to be issued at an election and hereafter issued and delivered in accordance with that authorization shall be the legal, valid, and binding obligations of the public body. Whenever an election has heretofore been called for the purpose of submitting to the voters of any public body the question of issuing bonds for any public purpose, those bonds, if hereafter authorized by the required vote and in accordance with the proceedings heretofore taken, and issued and delivered in accordance with that authorization, shall be the legal, valid, and binding obligations of the public body.

SEC. 7. (a) This act shall operate to supply legislative authorization as may be necessary to authorize, confirm, and validate any acts and proceedings heretofore taken pursuant to authority the Legislature could have supplied or provided for in the law under which those acts or proceedings were taken.

(b) This act shall be limited to the validation of acts and proceedings to the extent that the same can be effectuated under the state and federal Constitutions.

(c) This act shall not operate to authorize, confirm, validate, or legalize any act, proceeding, or other matter being legally contested or inquired into in any legal proceeding now pending and undetermined or that is pending and undetermined during the period of 30 days from and after the effective date of this act, and shall

not operate to authorize, confirm, validate, or legalize any act, proceeding, or other matter that has heretofore been determined in any legal proceeding to be illegal, void, or ineffective.

(d) This act shall not operate to authorize, confirm, validate, or legalize a contract between any public body and the United States.

SEC. 8. Any action or proceeding contesting the validity of any action or proceeding heretofore taken under any law, or under color of any law, for the formation, organization, or incorporation of any public body, or for any annexation thereto, exclusion therefrom, or other change of boundaries thereof, or for the consolidation, merger, or dissolution of any public bodies, or for, or in connection with, the authorization, issuance, sale, execution, delivery, or exchange of bonds thereof upon any ground involving any alleged defect or illegality not effectively validated by the prior provisions of this act and not otherwise barred by any statute of limitations or by laches shall be commenced within six months of the effective date of this act; otherwise each and all of those matters shall be held to be valid and in every respect legal and incontestable. This act shall not extend the period allowed for legal action beyond the period that it would be barred by any presently existing valid statute of limitations.

SEC. 9. Nothing contained in this act shall be construed to render the creation of any public body, or any change in the boundaries of any public body, effective for purposes of assessment or taxation unless the statement, together with the map or plat, required to be filed pursuant to Chapter 8 (commencing with Section 54900) of Part 1 of Division 2 of Title 5 of the Government Code, is filed within the time and substantially in the manner required by those sections.

CHAPTER 538

An act to validate the organization, boundaries, acts, proceedings, and bonds of public bodies, and to provide limitations of time wherein actions may be commenced, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 16, 1998. Filed with Secretary of State September 17, 1998.]

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

SECTION 1. This act may be cited as the Second Validating Act of 1998.

SEC. 2. As used in this act:

(a) "Public body" means the state and all departments, agencies, boards, commissions, and authorities of the state. "Public body" also means all counties, cities and counties, cities, districts, authorities, agencies, boards, commissions, and other entities, whether created

by a general statute or a special act, including, but not limited to, the following:

Agencies, boards, commissions, or entities constituted or provided for under or pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

Air pollution control districts.

Air quality management districts.

Airport districts.

Assessment districts, benefit assessment districts, and special assessment districts of any public body.

Bridge and highway districts.

California water districts.

Citrus pest control districts.

City maintenance districts.

Community college districts.

Community development commissions.

Community facilities districts.

Community redevelopment agencies.

Community rehabilitation districts.

Community services districts.

Conservancy districts.

Cotton pest abatement districts.

County boards of education.

County drainage districts.

County flood control and water districts.

County free library systems.

County maintenance districts.

County sanitation districts.

County service areas.

County transportation commissions.

County water agencies.

County water authorities.

County water districts.

County waterworks districts.

Department of Water Resources and other agencies acting pursuant to Part 3 (commencing with Section 11100) of Division 6 of the Water Code.

Distribution districts of any public body.

Drainage districts.

Fire protection districts.

Flood control and water conservation districts.

Flood control districts.

Garbage and refuse disposal districts.

Garbage disposal districts.

Geologic hazard abatement districts.

Harbor districts.

Harbor improvement districts.

Harbor, recreation, and conservation districts.

Health care authorities.
Highway districts.
Highway interchange districts.
Highway lighting districts.
Housing authorities.
Improvement districts or improvement areas of any public body.
Industrial development authorities.
Infrastructure financing districts.
Integrated financing districts.
Irrigation districts.
Joint highway districts.
Levee districts.
Library districts.
Library districts in unincorporated towns and villages.
Local agency formation commissions.
Local health care districts.
Local health districts.
Local hospital districts.
Local transportation authorities or commissions.
Maintenance districts.
Memorial districts.
Metropolitan transportation commissions.
Metropolitan water districts.
Mosquito abatement or vector control districts.
Municipal improvement districts.
Municipal utility districts.
Municipal water districts.
Nonprofit corporations.
Nonprofit public benefit corporations.
Open-space maintenance districts.
Parking authorities.
Parking districts.
Permanent road divisions.
Pest abatement districts.
Police protection districts.
Port districts.
Project areas of community redevelopment agencies.
Protection districts.
Public cemetery districts.
Public utility districts.
Rapid transit districts.
Reclamation districts.
Recreation and park districts.
Regional justice facility financing agencies.
Regional park and open-space districts.
Regional planning districts.
Regional transportation commissions.
Resort improvement districts.

Resource conservation districts.
River port districts.
Road maintenance districts.
Sanitary districts.
School districts of any kind or class.
Separation of grade districts.
Service authorities for freeway emergencies.
Sewer districts.
Sewer maintenance districts.
Small craft harbor districts.
Stone and pome fruit pest control districts.
Storm drain maintenance districts.
Storm drainage districts.
Storm drainage maintenance districts.
Storm water districts.
Toll tunnel authorities.
Traffic authorities.
Transit development boards.
Transit districts.
Unified and union school districts' public libraries.
Vehicle parking districts.
Water agencies.
Water authorities.
Water conservation districts.
Water districts.
Water replenishment districts.
Water storage districts.
Wine grape pest and disease control districts.
Zones, improvement zones, or service zones of any public body.

(b) "Bonds" means all instruments evidencing an indebtedness of a public body incurred or to be incurred for any public purpose, all leases, installment purchase agreements, or similar agreements wherein the obligor is one or more public bodies, all instruments evidencing the borrowing of money in anticipation of taxes, revenues, or other income of that body, all instruments payable from revenues or special funds of those public bodies, all certificates of participation evidencing interests in the leases, installment purchase agreements, or similar agreements, and all instruments funding, refunding, replacing, or amending any thereof or any indebtedness.

(c) "Hereafter" means any time subsequent to the effective date of this act.

(d) "Heretofore" means any time prior to the effective date of this act.

(e) "Now" means the effective date of this act.

SEC. 3. All public bodies heretofore organized or existing under, or under color of, any law, are hereby declared to have been legally organized and to be legally functioning as those public bodies. Every public body, heretofore described, shall have all the rights, powers,

and privileges, and be subject to all the duties and obligations, of those public bodies regularly formed pursuant to law.

SEC. 4. The boundaries of every public body as heretofore established, defined, or recorded, or as heretofore actually shown on maps or plats used by the assessor, are hereby confirmed, validated, and declared legally established.

SEC. 5. All acts and proceedings heretofore taken by any public body or bodies under any law, or under color of any law, for the annexation or inclusion of territory into those public bodies or for the annexation of those public bodies to any other public body or for the withdrawal or exclusion of territory from any public body or for the consolidation, merger, or dissolution of any public bodies are hereby confirmed, validated, and declared legally effective. This shall include all acts and proceedings of the governing board of any public body and of any person, public officer, board, or agency heretofore done or taken upon the question of the annexation or inclusion or of the withdrawal or exclusion of territory or the consolidation, merger, or dissolution of those public bodies.

SEC. 6. All acts and proceedings heretofore taken by or on behalf of any public body under any law, or under color of any law, for, or in connection with, the authorization, issuance, sale, execution, delivery, or exchange of bonds of any public body for any public purpose are hereby authorized, confirmed, validated, and declared legally effective. This shall include all acts and proceedings of the governing board of public bodies and of any person, public officer, board, or agency heretofore done or taken upon the question of the authorization, issuance, sale, execution, delivery, or exchange of bonds.

All bonds of, or relating to, any public body heretofore issued shall be, in the form and manner issued and delivered, the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore awarded and sold to a purchaser and hereafter issued and delivered in accordance with the contract of sale and other proceedings for the award and sale shall be the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore authorized to be issued by ordinance, resolution, order, or other action adopted or taken by or on behalf of the public body and hereafter issued and delivered in accordance with that authorization shall be the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore authorized to be issued at an election and hereafter issued and delivered in accordance with that authorization shall be the legal, valid, and binding obligations of the public body. Whenever an election has heretofore been called for the purpose of submitting to the voters of any public body the question of issuing bonds for any public purpose, those bonds, if hereafter authorized by the required vote and in accordance with the proceedings heretofore taken, and

issued and delivered in accordance with that authorization, shall be the legal, valid, and binding obligations of the public body.

SEC. 7. (a) This act shall operate to supply legislative authorization as may be necessary to authorize, confirm, and validate any acts and proceedings heretofore taken pursuant to authority the Legislature could have supplied or provided for in the law under which those acts or proceedings were taken.

(b) This act shall be limited to the validation of acts and proceedings to the extent that the same can be effectuated under the state and federal Constitutions.

(c) This act shall not operate to authorize, confirm, validate, or legalize any act, proceeding, or other matter being legally contested or inquired into in any legal proceeding now pending and undetermined or that is pending and undetermined during the period of 30 days from and after the effective date of this act, and shall not operate to authorize, confirm, validate, or legalize any act, proceeding, or other matter that has heretofore been determined in any legal proceeding to be illegal, void, or ineffective.

(d) This act shall not operate to authorize, confirm, validate, or legalize a contract between any public body and the United States.

SEC. 8. Any action or proceeding contesting the validity of any action or proceeding heretofore taken under any law, or under color of any law, for the formation, organization, or incorporation of any public body, or for any annexation thereto, exclusion therefrom, or other change of boundaries thereof, or for the consolidation, merger, or dissolution of any public bodies, or for, or in connection with, the authorization, issuance, sale, execution, delivery, or exchange of bonds thereof upon any ground involving any alleged defect or illegality not effectively validated by the prior provisions of this act and not otherwise barred by any statute of limitations or by laches shall be commenced within six months of the effective date of this act; otherwise each and all of those matters shall be held to be valid and in every respect legal and incontestable. This act shall not extend the period allowed for legal action beyond the period that it would be barred by any presently existing valid statute of limitations.

SEC. 9. Nothing contained in this act shall be construed to render the creation of any public body, or any change in the boundaries of any public body, effective for purposes of assessment or taxation unless the statement, together with the map or plat, required to be filed pursuant to Chapter 8 (commencing with Section 54900) of Part 1 of Division 2 of Title 5 of the Government Code, is filed within the time and substantially in the manner required by those sections.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to validate the organization, boundaries, acts, proceedings, and bonds of public bodies as soon as possible, it is necessary that this act take immediate effect.

CHAPTER 539

An act to amend Sections 14102, 14155, 14157, 14250, 14254.5, 14256, 14400, 14407, 14408, 14409, 14410, 14456, 14553, 14601, 14602, 14651, 14652, 14653, 14700, 14703, 14766, 14800, 14803, 14805, 14806, 14851, 14858, 14860, 14862, 14901, 14950, 14951, 14952, 14959, 15001, 15050, 15100, 15201, 15202, 15203, 15250, and 15251 of, to add Sections 14202.5, 14353.5, and 14452.5 to, to repeal Sections 14254, 14406, 14859, 14903, 14904, 15000, and 15307 of, to repeal Chapter 11 (commencing with Section 16100) of Division 5 of, and to repeal and add Sections 14252, 14350, 14351, 14352, and 14353 of, the Financial Code, relating to credit unions.

[Approved by Governor September 16, 1998. Filed with Secretary of State September 17, 1998.]

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

SECTION 1. Section 14102 of the Financial Code is amended to read:

14102. (a) Amendments to the articles of incorporation of any credit union may be adopted by resolution of the board of directors, which is also adopted by a vote of a majority of the members of the credit union present, in person or by proxy, as provided in the credit union's bylaws, at any regular or special meeting of the members for which notice of the proposed amendments has been given; provided, however, that a minimum vote of at least 10 percent of the entire membership entitled to vote on the question votes in favor of the amendment and those voting in favor of the amendment constitute a majority of the members participating in the vote.

(b) The commissioner may approve the amendment according to the resolution adopted by the board of directors if approved by less than 10 percent of the entire membership as provided in this section if the commissioner finds, upon the written and verified application filed by the board of directors, that (1) notice of the meeting called to consider the amendment or the ballot for written vote on the amendment was mailed to each member entitled to vote upon the question, (2) the notice or ballot disclosed the purpose of the meeting or the written vote, (3) the notice or ballot informed the membership that approval of the amendment might be sought pursuant to this section, and (4) a majority of the votes cast upon the question were in favor of the amendment.

(c) Notwithstanding subdivision (a) and Section 7812 of the Corporations Code, a credit union may amend its articles of incorporation to change its name with the approval of its board of directors and without the approval of its members.

SEC. 1.4. Section 14155 of the Financial Code is amended to read:

14155. Upon reasonable notice and opportunity to be heard, the commissioner may deny the application for a certificate to act as a credit union or an expansion of the field of membership of an existing credit union for any of the following reasons:

(a) The field of membership of the applicant is contrary to the principles of organizing credit unions, including principles of organizing credit unions based on common bond of occupation, association, or groups within a well-defined neighborhood, community or rural district.

(b) A false statement of a material fact has been made in the application for certificate.

(c) Any officer, director, or committee member of the applicant has, within the last 10 years, been (1) convicted of or pleaded nolo contendere to a crime, or (2) committed any act involving dishonesty, fraud, or deceit, which crime or act is substantially related to the qualifications, functions, or duties of a person engaged in business in accordance with the provisions of this division.

(d) The applicant or any officer, director, or committee member of the applicant has violated any provision of this division or the rules thereunder or any similar regulatory scheme of a foreign jurisdiction.

(e) The number of persons eligible for membership is less than 500.

(f) The applicant's showing as to the economic feasibility of the proposed credit union is inadequate. Notwithstanding anything to the contrary, nothing shall prohibit a credit union from admitting to membership any corporation formed to provide services to credit unions or to credit union members in which the credit union holds shares pursuant to Sections 14650 and 14651 and any limited liability company formed to provide services to credit unions or to credit union members in which the credit union holds membership or economic interests pursuant to Section 14651.

SEC. 1.6. Section 14157 of the Financial Code is amended to read:

14157. (a) A credit union organized and duly qualified as a credit union in another state of the United States shall become a credit union organized and operating pursuant to this division if in compliance with each of the following requirements:

(1) The credit union has filed a statement with the Secretary of State pursuant to Section 2105 of the Corporations Code.

(2) The commissioner has approved an application filed by the credit union that has not been suspended or revoked.

(3) The interest rate of the credit union on loans made to members residing in this state does not exceed the maximum interest rate permitted by the jurisdiction under whose laws it is organized.

(4) The credit union has obtained bond or insurance coverage as prescribed in Section 14409.

(5) The credit union has obtained insurance or guaranty for its members' share accounts as prescribed in Section 14858.

(6) The credit union submits an annual audit report to the commissioner as prescribed in Article 2 (commencing with Section 14250) of Chapter 3.

(7) The credit union pays the cost of examination or services performed in accordance with Section 14353.5.

(8) The credit union pays to the commissioner an annual fee of two hundred fifty dollars ($250). The credit union is not subject to Section 14350, 14351, or 14352.

(b) For the purpose of implementing the provisions of this section, the commissioner may cooperate with the administrators of the credit union laws of other states and the commissioner may share with them information received in the administration of this division.

(c) The commissioner may disapprove an application filed pursuant to this section, or upon reasonable notice and opportunity for hearing suspend or revoke approval of an application, if the commissioner finds that the standards of organization, operation and regulation of the credit union, including, but not limited to, the laws and regulations of the jurisdiction in which it is organized, do not reasonably conform to the standards of organization, operation and regulation established pursuant to this division, or that 50 percent or more of the members of the credit union are, or are reasonably expected to be, residents of this state.

SEC. 1.8. Section 14202.5 is added to the Financial Code, to read:

14202.5. If and to the extent that any provision of this division is preempted by federal law, the provision does not apply and shall not be enforced.

SEC. 2. Section 14250 of the Financial Code is amended to read:

14250. (a) (1) The commissioner may at any time investigate into the affairs and examine the books, accounts, records, and files used in the business of every credit union, whether it acts or claims to act under or without authority of this division.

(2) The commissioner and the commissioner's duly designated representatives shall have free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of every credit union referred to in paragraph (1).

(b) (1) The commissioner shall examine every credit union organized under the laws of this state to the extent and whenever and as often as the commissioner shall deem it advisable, but in no case less than once every two years.

(2) For purposes of this subdivision, an examination made by the commissioner in conjunction with or with assistance from the National Credit Union Administration or a credit union regulatory agency of another state of the United States is deemed to be an examination made by the commissioner.

(3) No provision of this subdivision shall be deemed to require that the commissioner make an examination onsite at the offices of a credit union.

SEC. 3. Section 14252 of the Financial Code is repealed.

SEC. 4. Section 14252 is added to the Financial Code, to read:

14252. (a) The commissioner may, by order or regulation, either unconditionally or upon specified terms and conditions, grant an exemption from this section in any case where the commissioner finds that the requirements of this section are not necessary or advisable.

(b) Each credit union shall, within 105 days after the end of each fiscal year or within any extended time that the commissioner may specify, file with the commissioner an audit report for the fiscal year.

(c) The audit report called for in subdivision (b) shall comply with all of the following provisions:

(1) The audit report shall contain the audited financial statements of the credit union for, or as of the end of, the fiscal year, prepared in accordance with generally accepted accounting principles that the commissioner may specify and any other information that the commissioner may specify.

(2) The audit report shall be based upon an audit of the credit union conducted in accordance with generally accepted auditing standards and any other requirements that the commissioner may specify.

(3) The audit report shall be prepared by an independent certified public accountant or independent public accountant who is acceptable to the commissioner.

(4) The audit report shall include or be accompanied by a certificate or opinion of the independent certified public accountant or independent public accountant that is satisfactory in form and content to the commissioner. If the certificate or opinion is qualified, the commissioner may order the credit union to take any action that the commissioner may find necessary or advisable to enable the independent certified public accountant or independent public accountant to remove the qualification.

SEC. 5. Section 14254 of the Financial Code is repealed.

SEC. 6. Section 14254.5 of the Financial Code is amended to read:

14254.5. Within 10 business days of opening, closing, or relocating a branch office, a credit union shall notify the commissioner in writing of the action, including the street and mailing addresses of the branch office.

SEC. 7. Section 14256 of the Financial Code is amended to read:

14256. (a) If any credit union fails to file with the commissioner any report required by this division on or before the day designated for the filing of the report or, if the time for filing the report is extended by the commissioner, within the extended time, or fails to include in the report any matter required by the commissioner, the

failure is grounds for the suspension or revocation of the certificate authorizing the credit union to act as a credit union.

(b) If any credit union fails to file with the commissioner any report required by this division or by any order or regulation of the commissioner, on or before the day designated for the filing of the report or, if the time for filing the report is extended by the commissioner, within the extended time, or fails to include in the report any matter required by the commissioner, the commissioner may, after notice and hearing, order the credit union to pay to the commissioner a civil penalty in an amount not to exceed one thousand dollars ($1,000) for each day that the report is delinquent or deficient.

SEC. 8. Section 14350 of the Financial Code is repealed.

SEC. 9. Section 14350 is added to the Financial Code, to read:

14350. The commissioner shall annually levy on and collect from credit unions holding certificates authorizing them to act as credit unions, pro rata on the basis of total assets, an assessment in a total amount that is sufficient in the commissioner's opinion to (a) meet the expenses of the department in administering this division and other laws relating to credit unions or the credit union business that are not otherwise provided for and (b) provide a reasonable reserve for contingencies.

SEC. 10. Section 14351 of the Financial Code is repealed.

SEC. 11. Section 14351 is added to the Financial Code, to read:

14351. (a) The amount of the annual assessment on any credit union holding a certificate authorizing it to act as a credit union shall be the greater of (1) one thousand five hundred dollars ($1,500) or (2) the sum of the products determined by multiplying (A) increments of the credit union's total assets by (B) percentages of the base assessment rate, according to the following table:

Total Assets (In millions)	Percentage of Base Assessment Rate
First $3	85.0%
Next $3	30.0%
Next $4	12.5%
Excess over $10	11.0%

(b) The base assessment rate for each annual assessment shall be fixed by the commissioner but shall not exceed two dollars and twenty cents ($2.20) per one thousand dollars ($1,000) of total assets.

SEC. 12. Section 14352 of the Financial Code is repealed.

SEC. 13. Section 14352 is added to the Financial Code, to read:

14352. For purposes of the annual assessment, the total assets of a credit union holding a certificate authorizing it to act as a credit union shall be determined as of a date fixed by the commissioner. However, if a credit union does not hold a certificate authorizing it

to act as a credit union as of that date but does so as of the date when the annual assessment is levied, its total assets for purposes of the annual assessment shall be determined as of the date of the levy.

SEC. 14. Section 14353 of the Financial Code is repealed.

SEC. 15. Section 14353 is added to the Financial Code, to read:

14353. (a) Whenever the commissioner levies an annual assessment on credit unions holding certificates authorizing them to act as credit unions, the commissioner shall promptly mail or otherwise deliver to each credit union assessed an invoice that shows (1) the amount of the credit union's annual assessment and (2) the date when the annual assessment is due and payable.

(b) The annual assessment on a credit union holding a certificate authorizing it to act as a credit union becomes a liability of the credit union on the date on which the commissioner levies the annual assessment.

(c) If the annual assessment on a credit union holding a certificate authorizing it to act as a credit union is not paid on time, the commissioner shall be entitled to and may collect, in addition to the amount of the annual assessment, a penalty of 5 percent of the amount of the unpaid annual assessment for each month or part of a month that the payment is delinquent.

SEC. 16. Section 14353.5 is added to the Financial Code, to read:

14353.5. Whenever the commissioner finds it necessary or advisable to make an extra examination of a credit union, the commissioner may charge the credit union a fee of seventy-five dollars ($75) per hour for each examiner engaged in the extra examination, and the credit union shall, within 10 days after the mailing or other delivery of a statement by the commissioner, pay the fee charged by the commissioner.

SEC. 17. Section 14400 of the Financial Code is amended to read:

14400. (a) The savings capital of a credit union shall consist of the payments made by members on shares as set forth in the credit union's written savings capital structure policy pursuant to Section 14862.

(b) The equity capital of the credit union shall consist of the credit union's regular reserve account, the undivided earnings account, and any appropriated undivided earnings accounts.

SEC. 17.3. Section 14406 of the Financial Code is repealed.

SEC. 18. Section 14407 of the Financial Code is amended to read:

14407. (a) Whenever the losses of any credit union resulting from a depreciation in the value of its securities or otherwise exceed its undivided earnings and reserve fund so that the estimated value of its assets is less than the total amount due its shareholders, the credit union may, if approved by a majority of all members at a meeting called to consider the matter, order a reduction of the liability to each of its shareholders, so as to divide the loss equitably among the shareholders. If thereafter the credit union realizes from its assets a greater amount than was fixed in the order of reduction,

the excess shall be divided among the shareholders whose assets were reduced, but to the extent of the reduction only.

(b) The commissioner may approve a reduction in the liability on shares approved by less than a majority of all members as provided in subdivision (a) if the commissioner finds, upon the written and verified application filed by the board of directors, that (1) notice of the meeting called to consider the question was mailed to each member entitled to vote upon the question, (2) the notice disclosed the purpose of the meeting and properly informed the membership that approval of the reduction in liability might be sought pursuant to this subdivision, and (3) that a majority of the votes cast upon the question were in favor of the reduction in liability.

SEC. 19. Section 14408 of the Financial Code is amended to read:

14408. No credit union shall make any gift or donation having a value in excess of one thousand dollars ($1,000) unless the gift or donation is in the best interest of the credit union, is approved by a resolution of the board of directors and is in conformance with any regulation or order that the commissioner may issue. The resolution of the board of directors approving the gift or donation shall identify the recipient of the gift or donation, state the value of the gift or donation, and specify the basis for the board's determination that the gift or donation is in the best interests of the credit union.

SEC. 20. Section 14409 of the Financial Code is amended to read:

14409. (a) Every credit union shall obtain adequate bond or insurance coverage, for each director, officer, supervisory committee member, and credit committee member, for the credit manager, and for each employee.

(b) The commissioner may adopt regulations setting forth guidelines with respect to the minimum amount of the bond or insurance coverage deemed adequate. The regulations may be based upon the gross assets of the credit union and may contain a formula or schedule for the calculation of minimum bond or insurance coverage.

SEC. 21. Section 14410 of the Financial Code is amended to read:

14410. (a) No member of the board of directors, supervisory committee, or credit committee shall receive any compensation for his or her services as a member of the board of directors, supervisory committee, or credit committee, but he or she may be provided with reasonable health, accident, and similar insurance. Nothing in this subdivision shall prohibit a member of the board of directors, supervisory committee, or credit committee from receiving nonmonetary compensation that is incidental to the person's service as a member of the board of directors, supervisory committee, or credit committee, if and as approved by regulation or order of the commissioner.

(b) Notwithstanding subdivision (a), a director or committee member may be reimbursed for actual expenses incurred in the performance of his or her duties if reimbursement is made pursuant

to the requirements of the commissioner's regulations controlling expense reimbursement by the credit union. Reimbursement for actual expenses may include, among other things, travel expenses incurred on or relating to credit union business, and any other matters, categories, or items of expense that the commissioner may establish by regulation.

(c) Nothing in this section shall prevent any person from receiving compensation for actual services as a general manager, credit manager, loan officer, or other position as an employee of the credit union.

SEC. 22. Section 14452.5 is added to the Financial Code, to read:

14452.5. A vacancy on the board of directors shall be filled in accordance with Section 7224 of the Corporations Code, subject to the following:

(a) A vacancy that exists due to the expiration of the term of a director shall be filled only by the members of a credit union.

(b) If the board of directors elects a director to fill a vacancy, the director so elected shall hold office only until the next annual meeting at which time the members shall elect a director to hold office until the expiration of the term for which elected.

(c) If the members elect a director to fill a vacancy, the director so elected shall hold office until the expiration of the term for which elected.

SEC. 22.5. Section 14456 of the Financial Code is amended to read:

14456. Unless the bylaws expressly reserve any or all of the following duties to the members, the directors have all of the following special duties:

(a) To act upon all applications for membership. The directors may delegate the power to approve applications for new membership to: (1) the chairperson of a membership committee or to an executive committee; or (2) any officer, director, committee member, or employee, pursuant to a written membership plan adopted by the board of directors, provided the board of directors reviews at least quarterly any membership application approved by an officer, director, committee member, or employee.

(b) To expel members for any of the following causes:

(1) Conviction of a criminal offense involving moral turpitude.

(2) Failure to carry out contracts, agreements or obligations with the credit union.

(3) Refusal to comply with the provisions of this division or of the bylaws.

Any members who are expelled by the board of directors have the right to appeal therefrom to the members, in which event, after hearing, the order of suspension may be revoked by a two-thirds vote of the members present at a special meeting to consider the matter.

(c) To determine from time to time the interest rate on obligations with members and to authorize the payment of interest refunds to borrowing members.

(d) To fix the maximum number of shares which may be held by, and, in accordance with Section 15100, establish the maximum amount of obligations which may be entered into with, any one member.

(e) To declare dividends on shares in accordance with the credit union's written capital structure policy and to determine the interest rate or rates which will be paid on certificates for funds.

(f) To amend the bylaws, except where membership approval is required.

(g) To fill vacancies in the credit committee, and to temporarily fill vacancies caused by the suspension of any or all members of the credit committee, pending a meeting of the members to determine whether to affirm the suspension and vacate the office, or to reinstate the member or members.

(h) To direct the deposit or investment of funds, except loans to members.

(i) To designate alternate members of the credit committee who shall serve in the absence or inability of the regular members to perform their duties.

(j) To perform or authorize any action not inconsistent with law or regulation and not specifically reserved by the bylaws for the members, and to perform any other duties as the bylaws may prescribe.

SEC. 23. Section 14553 of the Financial Code is amended to read:

14553. (a) The supervisory committee shall at least once each year make or cause to be made an audit of the books and records and an examination of the business and affairs of the credit union. The supervisory committee shall make a full report of the assets and liabilities, receipts and disbursements of the credit union to the board of directors. Those reports shall be presented at the annual meeting of members and filed with the records of the credit union.

(b) The supervisory committee may make or cause to be made any supplementary inspections of the securities, cash, and accounts of the credit union or audits as it deems necessary, and submit reports of those audits to the board of directors.

SEC. 24. Section 14601 of the Financial Code is amended to read:

14601. No member of the credit committee or the credit manager or any loan officer shall serve as a member of the supervisory committee.

SEC. 25. Section 14602 of the Financial Code is amended to read:

14602. (a) (1) No credit union shall create any obligation with a credit union member, without the written approval of a majority of all the members of the credit committee, the credit manager, or a loan officer appointed as provided in this section.

(2) Paragraph (1) does not apply to the creation of an obligation in accordance with a credit scoring program, preapproval credit program, or similar program, if the program was adopted by the board of directors, credit committee, or credit manager and complies with a written lending policy on programs of that type established by the board of directors in accordance with Section 15100.

(b) The credit committee or the credit manager may, with the approval of the board of directors, appoint one or more loan officers who shall be authorized to approve obligations with credit union members.

(c) Neither the credit committee, a credit manager, or any loan officer shall have the power to approve membership applications.

(d) No loan officers shall be permitted to approve any extension agreement of any obligation or the refinancing of any obligation except as prescribed in regulations promulgated by the commissioner.

(e) The credit committee, or in the alternative, the credit manager shall be provided with a record of each obligation approved or not approved by any loan officer, within 30 days of the approval or disapproval.

SEC. 25.3. Section 14651 of the Financial Code is amended to read:

14651. (a) Every credit union may invest in the shares of stock of a corporation, or in membership or economic interests of a limited liability company, organized solely for the purpose of providing services to credit unions, provided the corporation or limited liability company is formed by a credit union or group of credit unions.

(b) Every credit union may invest in the securities of a corporation or in membership or economic interests of a limited liability company that is not a corporation or limited liability company of the type described in subdivision (a) and that provides services to credit unions, provided the investment is approved by the commissioner.

SEC. 25.7. Section 14652 of the Financial Code is amended to read:

14652. Every credit union may invest in securities and other assets described in Chapter 9 (commencing with Section 1000) of the Banking Law as legal investments for savings banks.

SEC. 26. Section 14653 of the Financial Code is amended to read:

14653. Credit unions may invest in a trust organized solely for the purpose of investing in United States government securities and United States government agency securities, provided the trust is formed by an organization composed of credit unions or an organization of credit union associations.

SEC. 27. Section 14700 of the Financial Code is amended to read:

14700. Every credit union shall create and maintain a regular reserve as specified by the commissioner.

SEC. 28. Section 14703 of the Financial Code is amended to read:

14703. (a) A credit union shall establish and maintain an allowance for loan losses account in accordance with generally accepted accounting principles. The commissioner may order the credit union to increase the amount of its allowance for loan losses account if the commissioner finds that the amount of the account is not adequate.

(b) At the close of an accounting period, an adjustment shall be made in an amount equal to the balance in the provision for loan losses expense account. If the balance is a debit, regular reserves shall be charged, and undivided profits shall be credited, and, if the balance is a credit, undivided profits shall be charged and regular reserves shall be credited.

SEC. 29. Section 14766 of the Financial Code is amended to read:

14766. No officer, director, or employee of a credit union, directly or indirectly, shall purchase or be interested in the purchase of, any of the credit union's obligations or assets for an amount less than the book value thereof, unless all the directors of the credit union previously approve the purchase by resolution and a copy of the resolution is delivered to the commissioner immediately after adoption. Every person violating this section shall be liable to the people of this state for each offense in the amount of twice the book value of the assets so purchased.

SEC. 30. Section 14800 of the Financial Code is amended to read:

14800. (a) Every credit union may admit to membership those persons qualified for membership upon the occurrence of either of the following:

(1) Upon the payment of an entrance fee established from time to time by the board of directors.

(2) Upon the purchase of one or more shares in the credit union as provided in the credit union's bylaws.

(b) No officer, director, committee member, or employee of any credit union shall approve a person for admission to membership or admit an applicant for membership in the credit union or extend any benefit or service of the credit union to any person, unless that person is admitted to membership in the credit union pursuant to subdivision (a).

(c) Nothing in subdivisions (a) and (b) shall be construed to limit the powers of a credit union to engage in joint service programs or business relationships for the benefit of their members where some incidental benefit may flow to third parties to the transaction or the authority for a credit union to engage in joint loan programs pursuant to Section 14959.

(d) Nothing in this section prohibits a credit union from admitting to membership a corporation in which the credit union holds shares pursuant to Section 14650 or a corporation formed to provide services to credit unions or to credit union members in which the credit union holds shares or a limited liability company formed to provide services

to credit unions or to credit union members in which the credit union holds membership or economic interests pursuant to Section 14651.

SEC. 31. Section 14803 of the Financial Code is amended to read:

14803. (a) No credit union shall pay any commission or compensation to any person for securing a new member or for getting an existing member to make an additional deposit.

(b) Notwithstanding subdivision (a), a credit union may, pursuant to an incentive policy approved by the board of directors, offer and pay a reasonable incentive or inducement to (1) a nonmember for becoming a member of the credit union, (2) an existing member for depositing additional funds, and (3) an employee or member who assists in getting a nonmember to become a new member of the credit union or who assists in getting an existing member to make an additional deposit.

(c) Nothing in subdivision (a) limits a credit union from using growth in the number of members in the credit union as part of its compensation program for its employees.

SEC. 31.5. Section 14805 of the Financial Code is amended to read:

14805. Special meetings of members may be held upon order of the board of directors. Special meetings of members shall be held upon the written request of 10 members or 3 percent of the membership, whichever is greater. Notice of special meetings shall be given to all members specifying the date, time, place, and purpose of the meeting.

SEC. 32. Section 14806 of the Financial Code is amended to read:

14806. In credit unions formed on or after September 15, 1945, no member shall have more than one vote irrespective of the number of shares held by the member.

SEC. 32.5. Section 14851 of the Financial Code is amended to read:

14851. (a) Every credit union may issue shares (1) to any member qualified pursuant to the credit union's bylaws; (2) to an officer, employee, or agent of nonmember units of federal, Indian tribal, state, or local governments, and political subdivisions thereof when acting in his or her official capacity; and (3) in coownership to a member and any person designated by the member. Coownership, as used herein, includes, but is not limited to, joint tenancy, tenancy in common, or community property forms of ownership. No membership privilege, including voting and obtaining a loan, may be made available to any nonmember as a result of ownership of shares solely as coowner of shares with a member, and any certificate or other evidence of shares which may be issued, shall contain the words "No transfer of voting rights or other membership privilege is permitted by virtue of transfer of shares." Shares may be transferred to a public agency lawfully entitled to receive the shares when designated by a member as assignee of an account pledged as a surety deposit to the public agency by the member.

(b) A credit union that has a low-income designation pursuant to Section 701.34 of the regulations of the National Credit Union Administration (12 C.F.R. Sec. 701.34) may issue shares to nonmembers. Except with the written approval of the commissioner, the total number of shares issued by the credit union to nonmembers pursuant to this subdivision shall not exceed 20 percent of the unimpaired capital and surplus of the credit union.

SEC. 33. Section 14858 of the Financial Code is amended to read:

14858. Every credit union shall apply for and obtain insurance as provided for by Title II of the Federal Credit Union Act (12 U.S.C. Sec. 1781 and following), or other insurance or guaranty of shares that is not unsatisfactory to the commissioner. In seeking and retaining this insurance or guaranty, a credit union may do all things and assume and discharge all obligations required of it when not in conflict with the laws of this state.

SEC. 34. Section 14859 of the Financial Code is repealed.

SEC. 34.3. Section 14860 of the Financial Code is amended to read:

14860. Except as provided in this section and Part 2 (commencing with Section 5100) of Division 5 of the Probate Code, no credit union shall exercise trust powers except upon qualifying as a trust company pursuant to Division 1 (commencing with Section 99).

(a) Notwithstanding any other provisions of law relating to trusts and trust authority, subject to the regulations of the commissioner, a credit union may act as a trustee or custodian, and may receive reasonable compensation for so acting, under any written trust instrument or custodial agreement created or organized in the United States which is a part of a pension plan for its members or groups or organizations of its members, which qualifies or has qualified for specific tax treatment under Section 401, 408, 408A, 457, or 530 of the Internal Revenue Code, Title 26 of the United States Code, or any deferred compensation plan for the benefit of the credit union's employees, provided the funds received pursuant to these plans are invested as provided in Section 16040 of the Probate Code. All funds held by a credit union as trustee or in a custodial capacity shall be maintained in accordance with applicable laws and rules and regulations as may be promulgated by the Secretary of Labor, the Secretary of the Treasury, or any other authority exercising jurisdiction over the trust or custodial accounts. The credit union shall maintain individual records for each participant or beneficiary that show in detail all transactions relating to the funds of each participant or beneficiary.

The trust instrument or agreement shall provide for the appointment of a successor trustee or custodian by a person, committee, corporation, or organization other than the credit union or any person acting in his or her capacity as a director, employee, or agent of the credit union, upon notice from the credit union or the

commissioner that the credit union is unwilling or unable to continue to act as trustee or custodian.

(b) Shares may be issued in a revocable or irrevocable trust subject to the following:

(1) When shares are issued in a revocable trust, the settlor shall be a member of the credit union issuing the shares in his or her own right.

(2) When shares are issued in an irrevocable trust, the settlor or the beneficiary shall be a member of this credit union in his or her own right. For purposes of this section, shares issued pursuant to a pension plan authorized by this section shall be treated as an irrevocable trust unless otherwise indicated in rules and regulations issued by the commissioner.

(3) This subdivision does not apply to trust accounts established prior to the effective date of this subdivision.

SEC. 34.5. Section 14862 of the Financial Code is amended to read:

14862. The board of directors shall establish from time to time a written savings capital structure policy which shall set out the various terms and conditions upon which credit union shares may be issued, paid for, transferred, and withdrawn. The savings capital structure policy may provide for different rates, maturities and minimum share account balances, subject to the rules of the commissioner for the credit union's savings capital and the terms and conditions on which dividends may be calculated and paid to member's purchasing credit union shares. The savings capital structure policy shall have as its goal avoiding instability in the credit union's savings capital and thereby providing that credit union members have an adequate source of funds for loans and receive a fair return on member savings capital.

SEC. 34.7. Section 14901 of the Financial Code is amended to read:

14901. The rates of dividends and terms of payment may be established in advance by action of the board of directors. However, nothing in this section shall be construed to permit any credit union to pay a dividend except as provided in Section 14902.

SEC. 35. Section 14903 of the Financial Code is repealed.

SEC. 35.3. Section 14904 of the Financial Code is repealed.

SEC. 35.7. Section 14950 of the Financial Code is amended to read:

14950. (a) Every credit union may enter into obligations with its members upon the approval of the credit committee or, in the alternative, the credit manager, subject to the terms and conditions established by the board of directors pursuant to Section 15100.

(b) (1) The board of directors of a credit union shall adopt a policy governing the acceptance by the credit union of notes receivable from nonmembers as consideration for the sale of assets owned by the credit union through bona fide transactions.

(2) No credit union may accept notes receivable from nonmembers as consideration for the sale of assets owned by the credit union except in accordance with a policy adopted by the board of directors pursuant to paragraph (1).

(3) Transactions subject to this subdivision shall not be deemed to be loans to nonmembers for purposes of Section 14750.

SEC. 36. Section 14951 of the Financial Code is amended to read:

14951. Any application for any loan or extension or guarantee of credit, except an application for an extension of a loan, shall be in writing, shall state the purpose for which the loan or extension or guarantee of credit is desired, and, if applicable, shall describe the property that is proposed to secure the loan or extension or guarantee of credit.

SEC. 36.5. Section 14952 of the Financial Code is amended to read:

14952. (a) The board of directors of a credit union shall establish the maximum amount that the credit union may lend to a member under 18 years of age in any case other than a case (1) where the member is an emancipated minor or (2) where the loan is secured in the manner provided for in Section 14955.

(b) No credit union shall make a loan to a member under 18 years of age that will result in the member being obligated to the credit union in excess of the maximum amount established by the board of directors pursuant to subdivision (a) unless the member is an emancipated minor or the loan is secured in the manner provided for in Section 14955.

SEC. 37. Section 14959 of the Financial Code is amended to read:

14959. (a) A credit union may participate in loans made to its members jointly with other credit unions, corporations or financial organizations.

(b) A credit union may participate in a loan originated by another credit union which is made to a member of the originating credit union even though the member is not also a member of the credit union participating in the loan. A loan participation that is authorized by this subdivision shall not be deemed to be an obligation or a participation in an obligation with a nonmember within the meaning of Section 14750.

SEC. 38. Section 15000 of the Financial Code is repealed.

SEC. 39. Section 15001 of the Financial Code is amended to read:

15001. Every credit union may assess charges as approved by the board of directors for failure to meet punctually obligations to the credit union. Any late charge shall be made only once for each delinquent payment and shall be subject to Section 2954.5 of the Civil Code, Division 1.1 (commencing with Section 4000) of this code, and any other applicable law.

SEC. 40. Section 15050 of the Financial Code is amended to read:

15050. (a) For purposes of this section, "official" means a director, officer, or member of the supervisory committee or the credit committee of a credit union.

(b) No credit union shall enter into any obligation with any official, directly or indirectly, unless the obligation complies with all lawful requirements of this division with respect to obligations permitted for other members of the credit union and is not on terms more favorable than those extended to other members of the credit union, and the obligation is entered into in accordance with a written policy adopted by the directors establishing that all officials shall have an equal opportunity to enter into obligations with the credit union.

(c) No credit union shall enter into any obligation with any official, directly or indirectly, not fully secured by shares or certificates for funds unless all of the following requirements are satisfied:

(1) Upon the making of the obligation, the aggregate amount of obligations outstanding, except obligations fully secured by shares, to all officials and alternate members of the credit committee will not exceed 10 percent of the aggregate dollar amount of all savings capital of the credit union, except that in credit unions whose aggregate savings capital is five million dollars ($5,000,000) or more but less than ten million dollars ($10,000,000), the aggregate amount of obligations outstanding, except obligations fully secured by shares, to all officials and alternate members of the credit committee shall not exceed 15 percent of the aggregate dollar amount of all savings capital of the credit union, and in credit unions whose aggregate savings capital is less than five million dollars ($5,000,000), the aggregate amount of obligations outstanding, except obligations fully secured by shares, to all officials and alternate members of the credit committee shall not exceed 20 percent of the aggregate dollar amount of all savings capital of the credit union.

(2) The obligation, except any portion of an obligation fully secured by shares, does not exceed 1 percent of the aggregate dollar amount of all savings capital of the credit union, or the maximum obligation to the credit union prescribed by subdivisions (b) and (c) of Section 15100, whichever is less, except that in credit unions whose aggregate savings capital is five million dollars ($5,000,000) or more but less than ten million dollars ($10,000,000), the obligation, except any portion of an obligation fully secured by shares, shall not exceed 3 percent of the aggregate dollar amount of all savings capital of the credit union, or the maximum obligation to the credit union prescribed by subdivisions (b) and (c) of Section 15100, whichever is less, and in credit unions whose aggregate savings capital is less than five million dollars ($5,000,000), the obligation, except any portion of an obligation fully secured by shares, shall not exceed 5 percent of the aggregate dollar amount of all savings capital of the credit union, or the maximum obligation to the credit union prescribed by subdivisions (b) and (c) of Section 15100, whichever is less.

(3) (A) The obligation is approved by the credit committee, or in the alternative the credit manager, and by the board of directors, except that the credit manager shall not take part in any credit decision directly or indirectly for his or her benefit. The board of directors may select a loan officer to prepare a report and recommendation as to any extension of credit or other obligation requested by the credit manager.

(B) Subparagraph (A) does not apply to the creation of an obligation on which an official is a direct obligor or an endorser, cosigner, or guarantor, if the aggregate of all of the following does not exceed fifty thousand dollars ($50,000) plus the amount of shares, if any, that are pledged or will be pledged as collateral by the official:

(i) The amount of the proposed obligation.

(ii) The outstanding balances of obligations, including the used portion of any approved line of credit, extended to, or endorsed, cosigned, or guaranteed by, the official.

(iii) The total unused portion of approved lines of credit extended to, or endorsed, cosigned, or guaranteed by, the official.

(4) The credit union member entering into the obligation takes no part in the consideration of his or her application and does not attend any committee or board meeting while his or her application is under consideration.

(5) The names of members of the credit committee, or in the alternative, the credit manager, and board of directors who voted to authorize or ratify the obligation shall be entered in their respective minutes.

(d) No credit union shall permit an official or the credit manager to become surety for any obligation created by the credit union for anyone other than a member of their immediate family.

(e) No credit union shall enter into any obligation with any credit manager or any officer employed by the credit union, directly or indirectly, unless the obligation is in compliance with all requirements of this division with respect to obligations permitted for other members, and not on terms more favorable than those extended to other employees, and approved by the board of directors.

SEC. 40.5. Section 15100 of the Financial Code is amended to read:

15100. (a) The board of directors shall establish written policies which shall set forth the policies of the credit union with respect to any obligation that is offered to the members of the credit union. The written policies shall set forth the maximum amounts and terms for any obligation offered to the members, including, but not limited to, the following information:

(1) For loans, the written policies shall set out the terms for unsecured loans, the maximum amount and terms for secured loans, the schedule of interest rates established pursuant to Section 15000 for each type or class of unsecured and secured loan offered to

members, the maximum maturity for any loan, or, in the case of an open-end loan, the rate of repayment for any type or class of open-end loan, the limitations, if any, which shall be placed on the authority of any loan officer appointed pursuant to Sections 14602 and 14603, and, subject to the provisions of subdivisions (b) and (c), the individual limits on obligations that are applicable to all members of the credit union. Any policy developed pursuant to this section by the board of directors shall, insofar as possible, and, subject to individual creditworthiness, ensure equal access to funds available for obligations with credit union members.

(2) For obligations other than those set out in paragraph (1), the board of directors shall set out the interest rates and essential terms of the obligations offered to the members and any other information as may be required pursuant to regulations that may be adopted by the commissioner.

(b) Notwithstanding subdivision (a), no credit union policy shall permit a credit union to enter into obligations with an individual credit union member whereby the total obligations of that member, exclusive of amounts secured by shares or certificates for funds, exceed 10 percent of the aggregate dollar amount of the credit union's savings capital.

(c) Notwithstanding subdivision (b), no credit union policy shall permit a credit union to enter into obligations with any one family whereby the total obligations of the family would be greater than the amount permitted by subdivision (b). For purposes of this article, "family" means the marital couple or any head of household together with those dependents residing with the marital couple or the head of household and those dependents attending school away from the principal residence of the marital couple or head of household.

(d) Notwithstanding subdivisions (a), (b) and (c), any obligation with a member which is not a natural person shall not result in liability to the credit union in excess of that member's investment in the credit union unless an exception is authorized in the credit union's bylaws and approved by the commissioner. Any lending activity permitted pursuant to this subdivision may be terminated by an order issued by the commissioner pursuant to Sections 14200 and 14204.

SEC. 41. Section 15201 of the Financial Code is amended to read:

15201. (a) The merger shall be made pursuant to any plan agreed upon by the majority of the board of directors of each credit union joining in the merger, and approved by the affirmative vote of at least a majority of the members of the disappearing credit union, in person or by proxy, at a meeting of the members called for that purpose or by written consent of a majority of the members of the disappearing credit union. Notice of the meeting shall be given to the members, either personally or by first-class mail, not less than 30 nor more than 90 days prior to the date of the meeting.

(b) The commissioner may approve a merger according to the plan agreed upon by the majority of the board of directors of each credit union, as set forth in subdivision (a), if the plan of merger is approved by less than a majority of the membership as provided in subdivision (a) if the commissioner finds, upon the written and verified application filed by the board of directors, that (1) notice of the meeting called to consider the merger or the ballot for written vote on the merger was mailed to each member entitled to vote upon the question, (2) the notice or ballot disclosed the purpose of the meeting or the written vote, (3) the notice or ballot informed the membership that approval of the merger might be sought pursuant to this section, and (4) a majority of the votes cast upon the question were in favor of the merger.

(c) Notwithstanding subdivisions (a) and (b), the commissioner may approve a merger without a vote of the membership of the disappearing credit union if a majority of the members of the board of directors of the surviving credit union approves the merger, the disappearing credit union is in danger of insolvency and the merger would reduce the risk or avoid a threatened loss to the National Credit Union Share Insurance Fund or other form of share guaranty or insurance that is acceptable to the commissioner. For purposes of this chapter, a credit union is insolvent when, from the most recent available financial statements, it can be shown that the total amount of its shares exceeds the present cash value of its assets after providing for liabilities unless the commissioner finds all of the following:

(1) The facts that caused the deficient share-asset ratio no longer exist.

(2) Further decline in the share-asset ratio is not probable.

(3) The return of the share-asset ratio to its normal limits within a reasonable time for the credit union concerned is probable.

(4) The probability of a further potential loss is negligible to the National Credit Union Share Insurance Fund or other form of share guaranty or insurance that is acceptable to the commissioner.

SEC. 41.3. Section 15202 of the Financial Code is amended to read:

15202. (a) After the requirement of approval as provided in Section 15201 is satisfied, each credit union shall execute a certificate of merger as an officers' certificate pursuant to Section 5062 of the Corporations Code that shall set forth:

(1) That the plan of merger has been approved by the board of directors.

(2) That the plan of merger has been duly approved by any required vote of the members pursuant to Section 15201.

(3) The total number of members of the credit union.

(b) A copy of the plan of merger and of the written approval thereof by the commissioner shall be annexed to the certificate of merger.

(c) Nothing in this section requires a federal credit union to execute or file the certificate of merger called for in subdivision (a).

SEC. 42. Section 15203 of the Financial Code is amended to read:

15203. Each certificate of merger called for in Section 15202 shall be filed in the office of the Secretary of State. After the filing in the office of the Secretary of State, a copy of each certificate of merger, certified by the Secretary of State, shall be filed with the commissioner, and at that time the merger shall become effective for all purposes.

SEC. 43. Section 15250 of the Financial Code is amended to read:

15250. (a) Whenever the board of directors of a credit union recommends by a vote of a majority of all its members the dissolution of the credit union, the members of the credit union, at any meeting specially called to consider the subject, may elect to dissolve the credit union, by the vote or written consent of a majority of all members of the credit union.

(b) The commissioner may approve the dissolution of a credit union which is recommended by the vote of a majority of the board members of the credit union, even if the dissolution is approved by less than a majority of all members of the credit union, if the commissioner finds, upon the written and verified application filed by the board of directors, that (1) notice of the meeting called to consider the dissolution or the written ballot for written vote on the dissolution was mailed to each member entitled to vote upon the question, (2) the notice or the written ballot disclosed the purpose of the meeting or the written vote and informed the membership that approval of the dissolution might be sought pursuant to this section, and (3) a majority of the votes cast upon the question were in favor of the dissolution.

(c) Whenever the members of the board of directors vote to recommend the dissolution of any credit union, the credit union shall not make any loans, withdrawal of shares, or withdrawal of certificates for funds until the members approve or disapprove the recommendation of the board of directors.

SEC. 44. Section 15251 of the Financial Code is amended to read:

15251. If the dissolution of the credit union is approved pursuant to subdivision (a) or (b) of Section 15250, the board of directors of the credit union shall elect a committee of three members or may by resolution appoint a liquidating agent to liquidate the assets of the credit union. If the commissioner is appointed liquidating agent, the commissioner may act as liquidating agent or appoint the National Credit Union Administration or other person to act as liquidating agent. Whenever the commissioner is appointed liquidating agent, the credit union shall surrender its certificate to act as a credit union.

SEC. 45. Section 15307 of the Financial Code is repealed.

SEC. 46. Chapter 11 (commencing with Section 16100) of Division 5 of the Financial Code is repealed.

SEC. 47. Sections 9, 11, 13, 15, and 16 of this act shall become operative on July 1, 1999.

CHAPTER 540

An act to add Section 2080.10 to the Civil Code, relating to safekeeping of property.

[Approved by Governor September 16, 1998. Filed with Secretary of State September 17, 1998.]

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

SECTION 1. Section 2080.10 is added to the Civil Code, to read:

2080.10. (a) When a public agency obtains possession of personal property from a person for temporary safekeeping, the public agency shall do all of the following:

(1) Take responsibility for the storage, documentation, and disposition of the property.

(2) Provide the person from whom the property was taken with a receipt and instructions for the retrieval of the property. The receipt and instructions shall either be given to the person from whom the property was taken at the time the public agency obtains the property or immediately mailed, by first-class mail, to the person from whom the property was taken.

(3) If the public agency has knowledge that the person from whom the property was taken is not the owner, the agency shall make reasonable efforts to identify the owner. If the owner is identified, the public agency shall mail, by first-class mail, a receipt and instructions for the retrieval of the property.

(b) The receipt and instructions shall notify the person from whom the property was taken that the property must be claimed within 60 days after the public agency obtains possession or the property will be disposed of in accordance with the disposal provisions of this article. Within 60 days, the person may do one of the following:

(1) Retrieve the property.

(2) Authorize in writing another person to retrieve the property.

(3) Notify the public agency in writing that he or she is unable to retrieve the property, because he or she is in custody, and request the public agency to hold the property. If a person notifies the public agency that he or she is unable to retrieve the property within 60 days, or have an authorized person retrieve the property, the public agency shall hold the property for not longer than 10 additional months.

(c) The public agency shall not be liable for damages caused by any official action performed with due care regarding the disposition

of personal property pursuant to this section and the disposal provisions of this article.

(d) As used in this section, "public agency" means any state agency, any city, county, city and county, special district, or other political subdivision.

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 541

An act to amend Section 3368 of the Labor Code, relating to workers' compensation.

[Approved by Governor September 16, 1998. Filed with Secretary of State September 17, 1998.]

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

SECTION 1. Section 3368 of the Labor Code is amended to read:

3368. Notwithstanding any provision of this code or the Education Code to the contrary, the school district, county superintendent of schools, or any school administered by the State Department of Education under whose supervision work experience education, cooperative vocational education, or community classrooms, as defined by regulations adopted by the Superintendent of Public Instruction, or student apprenticeship programs registered by the Division of Apprenticeship Standards for registered student apprentices, are provided, shall be considered the employer under Division 4 (commencing with Section 3200) of persons receiving this training unless the persons during the training are being paid a cash wage or salary by a private employer. However, in the case of students being paid a cash wage or salary by a private employer in supervised work experience education or cooperative vocational education, or in the case of registered student apprentices, the school district, county superintendent of schools, or any school administered by the State Department of Education may elect to provide workers' compensation coverage, unless the person or firm under whom the

persons are receiving work experience or occupational training elects to provide workers' compensation coverage. If the school district or other educational agency elects to provide workers' compensation coverage for students being paid a cash wage or salary by a private employer in supervised work experience education or cooperative vocational education, it may only be for a transitional period not to exceed three months. A registered student apprentice is a registered apprentice who is (1) at least 16 years of age, (2) a full-time high school student in the 10th, 11th, or 12th grade, and (3) in an apprenticeship program for registered student apprentices registered with the Division of Apprenticeship Standards. An apprentice, while attending related and supplemental instruction classes, shall be considered to be in the employ of the apprentice's employer and not subject to this section, unless the apprentice is unemployed. Whenever this work experience education, cooperative vocational education, community classroom education, or student apprenticeship program registered by the Division of Apprenticeship Standards for registered student apprentices, is under the supervision of a regional occupational center or program operated by two or more school districts pursuant to Section 52301 of the Education Code, the district of residence of the persons receiving the training shall be deemed the employer for the purposes of this section.

CHAPTER 542

An act to amend Sections 798.55 and 798.56a of the Civil Code, and to amend Section 18035.2 of the Health and Safety Code, relating to mobilehome parks.

[Approved by Governor September 16, 1998. Filed with Secretary of State September 17, 1998.]

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

SECTION 1. Section 798.55 of the Civil Code is amended to read:

798.55. (a) The Legislature finds and declares that, because of the high cost of moving mobilehomes, the potential for damage resulting therefrom, the requirements relating to the installation of mobilehomes, and the cost of landscaping or lot preparation, it is necessary that the owners of mobilehomes occupied within mobilehome parks be provided with the unique protection from actual or constructive eviction afforded by the provisions of this chapter.

(b) The management shall not terminate or refuse to renew a tenancy, except for a reason specified in this article and upon the giving of written notice to the homeowner in the manner prescribed

by Section 1162 of the Code of Civil Procedure, to remove the mobilehome from the park within a period of not less than 60 days, which period shall be specified in the notice. A copy of this notice shall be sent to the legal owner, as defined in Section 18005.8 of the Health and Safety Code, each junior lienholder, as defined in Section 18005.3 of the Health and Safety Code, and the registered owner of the mobilehome, if other than the homeowner, by United States mail within 10 days after notice to the homeowner. The copy may be sent by regular mail or by certified or registered mail with return receipt requested, at the option of the management. If the homeowner has not paid the rent due within three days after notice to the homeowner, and if the first notice was not sent by certified or registered mail with return receipt requested, a copy of the notice shall again be sent to the legal owner, each junior lienholder, and the registered owner, if other than the homeowner, by certified or registered mail with return receipt requested within 10 days after notice to the homeowner. Copies of the notice shall be addressed to the legal owner, each junior lienholder, and the registered owner at their addresses, as set forth in the registration card specified in Section 18091.5 of the Health and Safety Code.

(c) The resident of a mobilehome that remains in the mobilehome park after service of the notice to remove the mobilehome shall continue to be subject to this chapter and the rules and regulations of the park, including rules regarding maintenance of the space.

(d) No lawful act by the management to enforce this chapter or the rules and regulations of the park may be deemed or construed to waive or otherwise affect the notice to remove the mobilehome.

SEC. 2. Section 798.56a of the Civil Code is amended to read:

798.56a. (a) Within 60 days after receipt of, or no later than 65 days after the mailing of, the notice of termination of tenancy pursuant to any reason provided in Section 798.56, the legal owner, if any, and each junior lienholder, if any, shall notify the management in writing of at least one of the following:

(1) Its offer to sell the obligation secured by the mobilehome to the management for the amount specified in its written offer. In that event, the management shall have 15 days following receipt of the offer to accept or reject the offer in writing. If the offer is rejected, the person or entity that made the offer shall have 10 days in which to exercise one of the other options contained in this section and shall notify management in writing of its choice.

(2) Its intention to foreclose on its security interest in the mobilehome.

(3) Its request that the management pursue the termination of tenancy against the homeowner and its offer to reimburse management for the reasonable attorney's fees and court costs incurred by the management in that action. If this request and offer are made, the legal owner, if any, or junior lienholder, if any, shall reimburse the management the amount of reasonable attorney's fees

and court costs, as agreed upon by the management and the legal owner or junior lienholder, incurred by the management in an action to terminate the homeowner's tenancy, on or before the earlier of (A) the 60th calendar day following receipt of written notice from the management of the aggregate amount of those reasonable attorney's fees and costs or (B) the date the mobilehome is resold.

(b) A legal owner, if any, or junior lienholder, if any, may sell the mobilehome within the park to a third party and keep the mobilehome on the site within the mobilehome park until it is resold only if all of the following requirements are met:

(1) The legal owner, if any, or junior lienholder, if any, notifies management in writing of the intention to exercise either option described in paragraph (2) or (3) of subdivision (a) within 60 days following receipt of, or no later than 65 days after the mailing of, the notice of termination of tenancy and satisfies all of the responsibilities and liabilities of the homeowner owing to the management for the 90 days preceding the mailing of the notice of termination of tenancy and then continues to satisfy these responsibilities and liabilities as they accrue from the date of the mailing of that notice until the date the mobilehome is resold.

(2) Within 60 days following receipt of, or no later than 65 days after the mailing of, the notice of termination of tenancy, the legal owner or junior lienholder commences all repairs and necessary corrective actions so that the mobilehome complies with park rules and regulations in existence at the time the notice of termination of tenancy was given as well as the health and safety standards specified in Sections 18550, 18552, and 18605 of the Health and Safety Code, and completes these repairs and corrective actions within 90 calendar days of that notice, or before the date that the mobilehome is sold, whichever is earlier.

(3) The legal owner, if any, or junior lienholder, if any, complies with the requirements of Article 7 (commencing with Section 798.70) as it relates to the transfer of the mobilehome to a third party.

(c) For purposes of subdivision (b), the "homeowner's responsibilities and liabilities" means all rents, utilities, reasonable maintenance charges of the mobilehome and its premises, and reasonable maintenance of the mobilehome and its premises pursuant to existing park rules and regulations.

(d) If the homeowner files for bankruptcy, the periods set forth in this section are tolled until the mobilehome is released from bankruptcy.

(e) Notwithstanding any other provision of law, including, but not limited to, Section 18099.5 of the Health and Safety Code, if neither the legal owner nor a junior lienholder notifies the management of its decision pursuant to subdivision (a) within the period allowed, or performs as agreed within 30 days, or if a registered owner of a mobilehome, that is not encumbered by a lien held by a legal owner or a junior lienholder, fails to comply with a notice of termination and

is either legally evicted or vacates the premises, the management may either remove the mobilehome from the premises and place it in storage or store it on its site. In this case, notwithstanding any other provision of law, the management shall have a warehouseman's lien in accordance with Section 7209 of the Commercial Code against the mobilehome for the costs of dismantling and moving, if appropriate, as well as storage, that shall be superior to all other liens, except the lien provided for in Section 18116.1 of the Health and Safety Code, and may enforce the lien pursuant to Section 7210 of the Commercial Code either after the date of judgment in an unlawful detainer action or after the date the mobilehome is physically vacated by the resident, whichever occurs earlier. Upon completion of any sale to enforce the warehouseman's lien in accordance with Section 7210 of the Commercial Code, the management shall provide the purchaser at the sale with evidence of the sale, as shall be specified by the Department of Housing and Community Development, that shall, upon proper request by the purchaser of the mobilehome, register title to the mobilehome to this purchaser, whether or not there existed a legal owner or junior lienholder on this title to the mobilehome.

(f) All written notices required by this section shall be sent to the other party by certified or registered mail with return receipt requested.

(g) Satisfaction, pursuant to this section, of the homeowner's accrued or accruing responsibilities and liabilities shall not cure the default of the homeowner.

SEC. 3. Section 18035.2 of the Health and Safety Code is amended to read:

18035.2. (a) For every sale by a dealer of a new or used manufactured home or mobilehome to be installed on a foundation system pursuant to subdivision (a) of Section 18551, the dealer shall execute in writing and obtain the buyer's signature on a purchase order, conditional sale contract, or other document evidencing the purchase, and provide a statement of fact complying with subdivision (b) of Section 18035.1, contemporaneous with or prior to the receipt of any cash or cash equivalent from the buyer and shall establish an escrow account with an escrow agent. The escrow shall not be subject to Section 18035.

(b) For every sale by a dealer of a new manufactured home or mobilehome installed or to be installed on a foundation system pursuant to subdivision (a) of Section 18551, the escrow instructions shall provide all of the following:

(1) That the original manufacturer's certificate of origin be placed in escrow.

(2) That, in the alternative:

(A) The lien of any inventory creditor on the manufactured home or mobilehome shall be satisfied by payment from the escrow account.

(B) That the inventory creditor shall consent in writing to other than full payment.

For purposes of this paragraph, "inventory creditor" includes any person who is identified as a creditor on the manufacturer's certificate of origin or any person who places the original certificate of origin in escrow and claims in writing to the escrow agent to have a purchase money security interest in the manufactured home or mobilehome as contemplated by Section 9107 of the Commercial Code.

(3) That the escrow agent shall obtain from the manufacturer a true and correct facsimile of the copy of the certificate of origin retained by the manufacturer pursuant to Section 18093.

(c) For every sale by a dealer of a new or used manufactured home or mobilehome that is subject to inspection pursuant to subdivision (a) of Section 18551, and for which it is stated, on the face of the document certifying or approving occupancy, that the issuance of the document is conditioned upon the payment of a fee, charge, dedication, or other requirement levied pursuant to Section 17620 of the Education Code, the escrow instructions shall provide that the payment of that fee, charge, dedication, or other requirement be made to the appropriate school district upon the close of escrow.

CHAPTER 543

An act to amend Section 8610.3 of, and to repeal, add, and repeal Section 8610.5 of, the Government Code, and to repeal and add Chapter 4 (commencing with Section 114650) of Part 9 of Division 104 of the Health and Safety Code, relating to nuclear powerplants.

[Approved by Governor September 16, 1998. Filed with Secretary of State September 17, 1998.]

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

SECTION 1. Section 8610.3 of the Government Code is amended to read:

8610.3. The Legislature hereby finds and declares as follows:

(a) The Office of Emergency Services, in consultation with the State Department of Health Services and affected counties, investigated the consequences of a serious nuclear powerplant accident for each of the nuclear powerplants in California with a generating capacity of 50 megawatts or more.

(b) This study culminated in the establishment of emergency planning zones for nuclear powerplant emergency preparedness.

(c) All state and local government nuclear powerplant emergency response plans have been revised to reflect the information provided in the study.

SEC. 2. Section 8610.5 of the Government Code is repealed.

SEC. 3. Section 8610.5 is added to the Government Code, to read:

8610.5. (a) For purposes of this section, the following definitions shall apply:

(1) "Department" means the State Department of Health Services.

(2) "Office" means the Office of Emergency Services.

(b) (1) State and local costs to carry out activities pursuant to this section and Chapter 4 (commencing with Section 114650) of Part 9 of Division 104 of the Health and Safety Code that are not reimbursed by federal funds shall be borne by utilities operating nuclear powerplants with a generating capacity of 50 megawatts or more.

(2) The Public Utilities Commission shall develop and transmit to the office an equitable method of assessing the utilities operating the powerplants for their reasonable pro rata share of state agency costs specified in paragraph (1).

(3) Each local government involved shall submit a statement of its costs specified in paragraph (1), as required, to the office.

(4) Upon each utility's notification by the office, from time to time, of the amount of its share of the actual or anticipated state and local agency costs, the utility shall pay this amount to the Controller for deposit in the Nuclear Planning Assessment Special Account, which is continued in existence, for allocation by the Controller, upon appropriation by the Legislature, to carry out activities pursuant to this section and Chapter 4 (commencing with Section 114650) of Part 9 of Division 104 of the Health and Safety Code. The Controller shall pay from this account the state and local costs relative to carrying out this section and Chapter 4 (commencing with Section 114650) of Part 9 of Division 104 of the Health and Safety Code, upon certification thereof by the office.

(5) Upon appropriation by the Legislature, the Controller may disburse up to 80 percent of a fiscal year allocation from the Nuclear Planning Assessment Special Account, in advance, for anticipated local expenses, as certified by the office pursuant to paragraph (4). The office shall review program expenditures related to the balance of funds in the account and the Controller shall pay the portion, or the entire balance, of the account, based upon those approved expenditures.

(c) (1) The total annual disbursement of state costs from the utilities operating the nuclear powerplants within the state for activities pursuant to this section and Chapter 4 (commencing with Section 114650) of Part 9 of Division 104 of the Health and Safety Code, shall not exceed the lesser of the actual costs or the maximum funding levels previously established by Chapter 4 (commencing with Section 114650) of Part 9 of Division 104 of the Health and Safety Code, as that chapter read on January 1, 1998, subject to subdivisions (e) and (f), to be shared equally among the utilities.

(2) Of the initial annual amount of one million three hundred forty thousand dollars ($1,340,000) for the 1999–2000 fiscal year, the sum of eight hundred three thousand dollars ($803,000) shall be for support of the office for activities pursuant to this section and Chapter 4 (commencing with Section 114650) of Part 9 of Division 104 of the Health and Safety Code, and the sum of five hundred thirty-seven thousand dollars ($537,000) shall be for support of the department for activities pursuant to this section and Chapter 4 (commencing with Section 114650) of Part 9 of Division 104 of the Health and Safety Code.

(d) (1) The total annual disbursement for each fiscal year, commencing July 1, 1999, of local costs from the utilities shall not exceed the lesser of the actual costs or the maximum funding levels, on a site basis, previously established on a per reactor basis by Section 1 of Chapter 1607 of the Statutes of 1988, in support of activities pursuant to this section and Chapter 4 (commencing with Section 114650) of Part 9 of Division 104 of the Health and Safety Code. The maximum initial annual amount available for disbursement for local costs, subject to subdivisions (e) and (f), shall be eight hundred fifty-one thousand dollars ($851,000) for the Diablo Canyon site and one million seventy-three thousand dollars ($1,073,000) for the San Onofre site.

(2) The amounts paid by the utilities under this section shall be allowed for ratemaking purposes by the Public Utilities Commission.

(e) The amounts available for disbursement for state and local costs as specified in this section shall be adjusted and compounded each fiscal year by the percentage increase in the California Consumer Price Index of the previous calendar year.

(f) Through the date specified in subdivision (g), the amounts available for disbursement for state and local costs as specified in this section shall be cumulative biennially. Any unexpended funds from a year when the state and local governments conduct a full participation exercise, as defined in Section 350.2 of Title 44 of the Code of Federal Regulations, that is not evaluated by the Federal Emergency Management Agency, shall be carried over to the year when the state and local governments conduct such an exercise that is evaluated by the Federal Emergency Management Agency.

(g) This section shall become inoperative on July 1, 2009, and, as of January 1, 2010, is repealed, unless a later enacted statute, which becomes effective on or before July 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

(h) Upon inoperation of this section, any amounts remaining in the special account shall be refunded pro rata to the utilities contributing thereto.

SEC. 4. Chapter 4 (commencing with Section 114650) of Part 9 of Division 104 of the Health and Safety Code is repealed.

SEC. 5. Chapter 4 (commencing with Section 114650) of Part 9 of Division 104 is added to the Health and Safety Code, to read:

CHAPTER 4. THE RADIATION PROTECTION ACT OF 1999

Article 1. General Provisions

114650. (a) As used in this chapter, the following definitions shall apply:

(1) "Department" means the State Department of Health Services.

(2) "Disburse or disbursement" means a payment in advance from the Nuclear Planning Assessment Special Account, as specified in paragraph (5) of subdivision (b) of Section 8610.5 of the Government Code.

(3) "Emergency planning zone" means a zone identified in state and local government emergency plans where immediate decisions for effective public protective action from radiation may be necessary.

(4) "Exercise" means an event that tests emergency plans and organizations and that the Federal Emergency Management Agency evaluates pursuant to Part 350 (commencing with Section 350.1) of Subchapter E of Chapter I of Title 44 of the Code of Federal Regulations.

(5) "Ingestion pathway phase" means the period beginning after any release of radioactive material from a nuclear powerplant accident when the plume emergency phase has ceased, and reliable environmental measurements are available for making decisions on additional protective actions to protect the food chain. The main concern is to prevent exposure from ingestion of contaminated water or food, such as milk, fresh vegetables, or aquatic foodstuffs.

(6) "Ingestion pathway zone" means the 50-mile radius around each of the state's nuclear powerplants in which protective actions may be required to protect the food chain in the event of an emergency.

(7) "Interjurisdictional Planning Committee" means the planning committee, comprised of representatives of the Counties of Orange and San Diego, the Cities of Dana Point, San Clemente, and San Juan Capistrano, the Camp Pendleton Marine Corps Base, the State Department of Parks and Recreation, and the Southern California Edison Company, established as a mechanism for coordinating integrated preparedness and response in the event of an emergency at the San Onofre Nuclear Generating Station.

(8) "Local government" means a city or county that provides emergency response for a nuclear powerplant emergency.

(9) "Local jurisdiction" means an entity that provides emergency response for a nuclear powerplant emergency in accordance with the plans of a local government.

(10) "Office" means the Office of Emergency Services.

(11) "Plume emergency phase" means the period beginning at the onset of an emergency at a nuclear powerplant when immediate decisions for public protective actions are needed.

(12) "Recovery phase" means the period when actions designed to reduce radiation levels in the environment to acceptable levels for unrestricted use are commenced, and ending when all recovery actions have been completed.

(13) "Site" means the location of a nuclear powerplant and its surrounding emergency planning zone.

114655. (a) The Legislature hereby finds and declares as follows:

(1) Existing law requires the development and maintenance of a nuclear powerplant emergency response program by state and local governments based on federal and state criteria.

(2) The office, in consultation with the department and the counties, has investigated the consequences of a serious nuclear powerplant accident and has established plume emergency phase and ingestion pathway phase planning zones for each site. These zones imply mutually supportive emergency planning and preparedness arrangements by all levels of government.

(3) An integrated emergency planning program is necessary for the benefit of the citizens within the planning zones.

(b) Nothing in this chapter limits the activities of any government in carrying out its general responsibilities pertaining to the public health and the safety aspects of emergency response.

Article 2. Responsibilities of the Office of Emergency Services

114660. (a) The office is responsible for the coordination and integration of all emergency planning programs and response plans under this chapter. If there is a nuclear powerplant accident, the office shall coordinate information and resources to support local governments in a joint state and local government decisionmaking process.

(b) The office shall perform all of the following duties and functions:

(1) Coordinate the activities of all state agencies relating to preparation and implementation of the State Nuclear Power Plant Emergency Response Plan. The office shall be the focal point for coordinating nuclear powerplant emergency preparedness activities with local governments, other state agencies, federal agencies, and other organizations.

(2) Exercise explicit ultimate authority for allocating funds from the Nuclear Planning Assessment Special Account to local governments.

(3) Coordinate and participate in exercises of the state's nuclear emergency response plan with each site during its federally evaluated exercise.

(4) Ensure that state personnel are adequately trained to respond in the event of an actual emergency. The exercises shall include the department and other relevant state agencies.

(5) In consultation with the department, review protective action recommendations developed by the utilities and local government representatives.

(6) Coordinate planning guidance to state agencies and local governments.

(7) Ensure the development and maintenance of the State Nuclear Power Plant Emergency Response Plan and procedures necessary to carry out those responsibilities and review and approve state agency plans in draft prior to publication.

(8) Exercise discretionary authority regarding the formation of interagency agreements with state agencies having local emergency responsibilities, to ensure state agencies have updated emergency plans and trained emergency response personnel to respond during the plume emergency phase.

(9) Annually prepare and submit a report to any joint committee of the Legislature and the appropriate Senate and Assembly policy committees with jurisdiction over emergency and disaster services that summarizes all of the following:

(A) A description of the purpose of all nuclear emergency response exercises in the state involving local and state authorities, including a description of state and local roles in each exercise.

(B) An accounting of revenues from each utility and a description of expenditures of funds from the Nuclear Planning Assessment Special Account by each local government and the state.

(C) A description of all nuclear emergency response training and education efforts undertaken by the state and local agencies, and identification of any additional training and educational needs.

(D) Recommendations consistent with this chapter.

(10) Conduct a study similar to that described in Section 8610.3 of the Government Code, for any nuclear powerplant with a generating capacity of 50 megawatts or more that is proposed for licensing in this state.

Article 3. Responsibilities of the State Department of Health Services

114662. (a) The department shall provide technical support for plume emergency phase response. During the ingestion pathway and recovery phases, the department shall have the lead technical role and shall participate in a joint state and local government protective action decisionmaking process. The department shall prepare the ingestion pathway and recovery plan, and shall provide guidelines for local government ingestion pathway and recovery plans.

(b) The department shall maintain plans for communicating public health information during the ingestion pathway and recovery phases. The department shall also maintain a radiological advisory team, and shall maintain a list of medical facilities capable of caring for radiological casualties.

(c) The department shall perform all of the following duties and functions:

(1) Act as the responsible entity for ensuring that ingestion pathway and recovery plans are maintained and ready to be implemented, including necessary training and exercises, in coordination with affected counties and the office.

(2) Establish protective action guidelines for ingestion pathway and recovery operations with reference to the recommendations of the federal Environmental Protection Agency.

(3) Coordinate development and maintenance by counties of, and review any information database of food, water, and animal resources for, the 50-mile ingestion pathway zone around the San Onofre and Diablo Canyon nuclear powerplants.

(4) Establish measurement standards and procedures to assess radioactivity in exposure pathways, including, but not limited to, food, water, and animals, which are compatible with the federal Environmental Protection Agency's standards and procedures.

(5) Support local government nuclear emergency planning, training, exercises, and response in coordination with the office.

(6) Maintain plans for coordinating the dissemination of public health information during the recovery phase of a nuclear powerplant emergency.

(7) Define and maintain a radiological advisory team, which shall not make decisions within the jurisdiction of emergency planning and response organizations. The guidelines for the team shall include, but not be limited to, all of the following requirements:

(A) The team shall include individuals with expertise in medicine, radiation biology, radiation casualty management, emergency preparedness and disaster response, public health, and government responsibilities.

(B) The team shall be available to advise the department on its nuclear powerplant emergency planning and response.

(C) The team may provide advice and counsel regarding radiation protection safety issues.

(8) Maintain guidelines for the designation for medical facilities that would be capable of managing and caring for casualties caused by a nuclear radiation accident.

(9) Develop and maintain a list of medical facilities that meet the statewide guidelines.

Article 4. Responsibilities of Local Government

114677. (a) Local governments shall develop and maintain radiological emergency preparedness and response plans to safeguard the public in the emergency planning zone around a nuclear powerplant.

(b) The responsibilities of local government within an emergency planning zone include, but are not limited to, all of the following:

(1) Preemergency preparedness, including developing, maintaining, and enhancing radiological emergency response plans and procedures; maintaining emergency management organizations and operations and field response organizations; making training available to local government organizations in conjunction with utilities; providing public information and education in conjunction with utilities ; maintaining essential communications systems; and implementing other preemergency preparedness measures, as required in accordance with federal requirements and state plans and procedures.

(2) Managing plume emergency phase response actions; providing available resources for emergency response; notifying emergency workers and the public; providing emergency public information; making protective action decisions and taking protective action response, to provide public health support in conjunction with the utility and state; providing radiologic exposure control; procuring additional resources, and taking other actions needed for emergency response.

(3) Participating in a joint state and local government decisionmaking process during ingestion pathway phases and recovery phases; coordinating implementation of protective action decisions with state and federal governments; continuing emergency public information in conjunction with state and federal organizations; and providing support for security of evacuated areas.

(c) At the San Onofre Nuclear Generating Station, the Interjurisdictional Planning Committee shall identify a discussion leader to facilitate local government protective action decisions during the plume emergency phase of a nuclear powerplant emergency.

(d) A local government within an emergency planning zone may request services from a jurisdiction outside the emergency planning zone that are necessary to support an evacuated emergency planning zone population. Services requested by a local government within the emergency planning zone may include, but are not limited to, public information, congregate care, traffic management, radiological monitoring or decontamination of evacuees, and interjurisdictional coordination.

Article 5. Responsibilities of Entities Providing Utilities

114680. Entities providing utilities shall perform all of the following duties and functions:

(a) Any public or private utility that operates a nuclear powerplant in the state shall have a response organization that can be integrated with federal, state, and local government emergency response resources during a radiological accident.

(b) Nuclear facility operators shall develop and maintain radiological emergency preparedness and response plans in coordination with state and local government.

(c) Nuclear utilities have the primary responsibility for planning and implementing emergency measures within facility boundaries and shall do all of the following:

(1) Perform accident assessments.

(2) Prepare public protective action recommendations for decisionmakers during the plume emergency phase.

(3) Provide information to the appropriate state and local government in support of their independent assessment of offsite radiological conditions relevant to protective action decisions during the plume emergency phase.

(4) Coordinate with state and local governments in maintaining nuclear powerplant public education information.

(5) Support state and local government in nuclear powerplant planning, training, drills and exercises, and emergency preparedness efforts.

Article 6. Responsibilities of Other Agencies

114685. (a) The Department of Transportation shall include within its criteria for funding, repair, and construction projects, the need for adequate emergency evacuation routes.

(b) State and local law enforcement agencies shall ensure all of the following:

(1) Traffic flow plans for areas outside the emergency planning zones shall adequately reflect the possible evacuation of residents outside those zones.

(2) Traffic flow plans shall take into consideration that some evacuation routes may be impassible under certain weather conditions and shall have plans for designating alternative routes.

(3) Officers who may be needed to respond during a nuclear powerplant emergency shall receive the necessary training, including refresher courses at least once each year.

(c) Local jurisdictions within an emergency planning zone shall coordinate nuclear powerplant emergency response plans and procedures with local governments and shall participate in training, drills, and exercises as needed.

SEC. 6. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. The Controller shall transfer from the Nuclear Planning Assessment Special Account created pursuant to Section 8610.5 of the Government Code to the State Mandates Claims Fund an amount equal to the amount of any reimbursement to local agencies and school districts from the State Mandates Claims Fund made on account of this act, which amount is to be available for expenditure only upon subsequent appropriation by the Legislature notwithstanding Section 17614 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 544

An act to add Section 44226.5 to the Education Code, relating to teacher credentialing, and making an appropriation therefor.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. (a) (1) The Legislature finds and declares that the current high demand for qualified teachers resulting from factors such as the Class Size Reduction Program requires the state to investigate new options for teacher training that do not compromise state standards.

(2) It is the intent of the Legislature that the accreditation pilot project established pursuant to the act adding this section provide more opportunities for teacher training by determining ways in which higher education institutions accredited by a regional accrediting organization other than the Western Association of Schools and Colleges can offer teacher preparation programs in California without reducing state standards for these programs.

SEC. 2. Section 44226.5 is added to the Education Code, to read:

44226.5. (a) Contingent upon funding expressly for this purpose, the commission, together with the Committee on Accreditation established pursuant to Section 44373, shall establish a three-year

accreditation pilot project, beginning no later than June 15, 1999, to improve accreditation review of nontraditional teacher preparation programs. For the purposes of this section, a "nontraditional teacher preparation program" is a regionally accredited institution of higher education, located in California or in another state, that delivers teacher preparation coursework at one or more locations in California that are distant from the institution's home campus.

(b) Notwithstanding subdivision (b) of Section 44227, the commission shall include in the accreditation pilot project at least three, but no more than six, institutions of higher education that are located in a state other than California and that have been accredited by a regional accrediting organization other than the Western Association of Schools and Colleges, upon application from institutions that meet standards established by the commission. Participating institutions shall meet all commission policies and procedures governing the approval and accreditation of credential programs in addition to the requirements of any other applicable laws. The accreditation pilot project may also include programs offered by institutions accredited by the Western Association of Schools and Colleges.

(c) In conducting the accreditation pilot project, the commission and the Committee on Accreditation shall develop and employ specific standards that address the unique characteristics of non-campus-based programs and ensure that the teacher preparation programs of participating institutions are equivalent to, and not of a lower quality or standard than, traditional teacher preparation programs. These standards shall provide for early initial reviews of newly created, nontraditional programs to assure candidates and public schools that candidates enrolled in the programs are provided with sufficient opportunities to meet state teacher credentialing standards to ensure that these candidates will be as qualified to teach in California public schools as those teachers prepared and educated in teacher preparation programs approved prior to the enactment of the act adding this section.

(d) The goals and objectives of the accreditation pilot project include, but need not be limited to, the following outcomes:

(1) Expansion of the number of accredited teacher preparation programs in California.

(2) An increase in the number of candidates recommended for California teaching credentials.

(3) A determination of whether current teacher preparation standards are sufficient to ensure quality and effectiveness when applied to programs offered at a distance from an institution's home campus, particularly when the institution is accredited by a regional accrediting body other than the Western Association of Schools and Colleges.

(4) Proposed modifications of existing standards, policies, funding or procedures, and the development of new standards, policies,

funding or procedures, to ensure the quality and effectiveness of programs offered at a distance from a home campus.

(e) The commission and the Committee on Accreditation shall report to the Legislature on the results of the accreditation pilot project on or before August 15, 2002, with recommendations to maintain, modify, delete, or expand the accreditation project established pursuant to this section. The commission and the Committee on Accreditation shall assess and report upon any instance where an institution of higher education that is participating in the accreditation pilot project initiated a teacher preparation program or location which is later terminated or closed.

(f) This section shall become inoperative on June 15, 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. 3. The sum of three hundred thousand dollars ($300,000) is hereby appropriated to the Commission on Teacher Credentialing from the Teacher Credential Fund, without regard to fiscal year, for the purposes of operating the accreditation pilot project established pursuant to Section 44226.5 of the Education Code.

CHAPTER 545

An act to amend Section 69615.6 of, to add Section 69613.55 to, and to add and repeal Article 13 (commencing with Section 44400) of Chapter 2 of Part 25 of, the Education Code, relating to certificated school employees, and making an appropriation therefor.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. It is the intent of the Legislature to address the problems caused by the current shortage of mathematic teachers by establishing new incentives for increased numbers of teachers to become competent and certificated in teaching mathematics thereby, increasing the number of competent and certificated mathematics teachers to provide greater opportunities for elementary and secondary school pupils to become proficient in mathematics as they prepare themselves for employment and citizenship in the 21st century. It is the intent of the Legislature that these new incentives take the form of a grant program for school districts and county superintendents of schools and a loan forgiveness program for individuals who learn to teach mathematics competently.

SEC. 2. Article 13 (commencing with Section 44400) is added to Chapter 2 of Part 25 of the Education Code, to read:

Article 13. California Mathematics Initiative for Teaching

44400. The California Mathematics Initiative for Teaching is hereby established for the general purpose of increasing the number of teachers who are competent and certificated to teach mathematics in public elementary and secondary schools in this state. The California Mathematics Initiative for Teaching has the purpose of providing financial incentives for as many individuals as possible to meet state teacher preparation standards and earn credentials, authorizations, and concentrations to teach mathematics in elementary and secondary schools. The California Mathematics Initiative for Teaching includes the following specific purposes and objectives:

(a) Provide resources so that as many individual teachers as possible become qualified and certificated to teach mathematics by pursuing a variety of alternative routes pursuant to this code.

(b) Highlight the severe shortage of qualified teachers of mathematics and the detrimental effects of this shortage, publicize the multiple ways in which mathematics teaching standards can be met, and focus attention on the increased availability of qualified, certificated teachers as a result of this initiative.

(c) Rely as much as possible on existing programs, structures, and systems to identify potential teachers of mathematics and to provide for their preparation and certification in mathematics and mathematics teaching.

(d) Facilitate the effective utilization of qualified teachers of mathematics in the elementary and secondary schools, and reduce the numbers of mathematics teaching positions that are filled by the use of emergency permits and credential waivers in mathematics.

44401. For the purposes of this article, the following terms have the following meanings unless the context in which they appear clearly requires otherwise:

(a) "Grant recipients" means school districts and county superintendents of schools that accept and receive grants of funds from the Commission on Teacher Credentialing for the California Mathematics Initiative for Teaching.

(b) "Program participants" means individuals who accept and receive financial assistance from grant recipients for the California Mathematics Initiative for Teaching.

(c) "Financial assistance" means an award of funds by a grant recipient to a program participant for the purpose of paying for tuition, academic fees, and the cost of textbooks in courses or programs to meet state teacher preparation standards and earn a credential, concentration, or supplementary authorization in mathematics.

(d) "Loan forgiveness program" means a program administered by a grant recipient under which a grant recipient awards financial assistance in the form of a loan that shall be completely forgiven when the program participant meets the mathematics teaching obligation specified in this article.

44402. (a) The California Mathematics Initiative for Teaching shall be administered by the Commission on Teacher Credentialing in accordance with this article and other applicable laws and regulations. The commission shall award grants to school districts, county superintendents of schools, and consortia composed of school districts. A county superintendent of schools may apply for a grant on behalf of programs and school districts within the jurisdiction of the county superintendent of schools. The commission shall encourage participation in the program by small, remote school districts and county superintendents of schools by encouraging the formation of regional consortia and by requiring the central sponsors of these consortia to perform all responsibilities related to local program administration. Participation in the California Mathematics Initiative for Teaching is voluntary on the part of a school district or county superintendent of schools. A school district, county superintendent of schools, or regional consortia shall establish its eligibility to participate by submitting to the commission a local plan to increase the number of teachers who are qualified and certificated in mathematics. Based on the availability of funds and the relative quality of local plans, the commission shall determine the number of grants to award and the amount of each grant pursuant to subdivision (b).

(b) In awarding grants pursuant to this article, the commission shall develop funding criteria and award grants to maximize the number of program participants who earn credentials, concentrations, or authorizations in mathematics as cost effectively as possible.

(c) The commission shall establish standards for supplementary authorizations, including supplementary authorizations in mathematics. The standards for supplementary authorizations shall emphasize, among other priorities, the importance of increasing the achievement of low-performing pupils. The commission recognize, for the purpose of awarding supplementary authorizations, including supplementary authorizations in mathematics, completion of a highly intensive program of teacher preparation which may include, but need not be limited to, a local subject matter program such as the California Mathematics Project created pursuant to Chapter 196 of the Statutes of 1982, provided that the program satisfies the applicable standards of the commission.

(d) The commission shall develop criteria for the distribution of financial assistance by school districts and county superintendents of schools to enable program participants to meet the applicable mathematics teaching credential standards. The criteria shall require

in school districts and counties where program funding is insufficient to meet the needs of all applicants that the financial need of teachers who apply for financial assistance shall be a factor in the selection of program participants by school districts and county superintendents of schools. The criteria shall also establish the following priorities for the selection of program participants by grant recipients:

(1) First priority shall be given to current certificated teachers who are teaching mathematics but have not earned mathematics credentials, authorizations, or concentrations.

(2) Second priority shall be given to current certificated teachers who are teaching nonshortage subjects but have not earned mathematics credentials, authorizations, or concentrations.

(e) The recipients of grants shall monitor the progress of each program participant toward meeting the standards for teaching mathematics and shall submit a report to the commission on the progress of each participant in accordance with procedures established by the commission.

(f) A participant in the California Mathematics Initiative for Teaching shall teach mathematics for one year in a public elementary or secondary school for each multiple of two thousand five hundred dollars ($2,500) of financial assistance that the program participant receives and accepts pursuant to this article. The commission shall determine equitable teaching obligations for participants who receive and accept a total of financial assistance that is not an even multiple of two thousand five hundred dollars ($2,500) and shall determine how to count part-time teaching of mathematics in fulfillment of the teaching obligation. School districts may require program participants to fulfill the teaching obligation in one or more schools that are under the jurisdiction of the school district or county superintendent of schools that awarded the financial assistance to the program participant and shall begin to fulfill that obligation in consecutive school years immediately after the participant earns a mathematics teaching credential, authorization, or concentration unless an exceptional circumstance, as defined by the commission and approved by the grant recipient, prevents the participant from meeting this requirement.

(g) Recipients of financial assistance who do not fulfill their teaching obligation in accordance with subdivision (f) shall repay to the commission or an agency named by the commission all funds received pursuant to this article in accordance with procedures established by the commission. Each report submitted to the commission pursuant to subdivision (e) shall include detailed information regarding the fulfillment and nonfulfillment of the teaching obligation by each recipient of financial assistance and the location of each noncompliant program participant.

(h) A program participant shall be eligible for financial assistance for no more than four consecutive academic years, for a total amount of financial assistance not to exceed seven thousand five hundred

dollars ($7,500). A program participant may utilize financial assistance to pay for tuition, academic fees and the cost of textbooks in courses or programs that will enable the program participant to earn a credential, concentration, or supplemental authorization in mathematics. A grant recipient may arrange to pay tuition and academic fees directly to the institution or other agency that provides instruction to program participants. A grant recipient shall document the tuition, academic fees, and textbook costs of each program participant and shall include this information in each report submitted pursuant to subdivision (e).

44403. The commission shall on or before January 1, 2004, submit to the education policy committees of the Legislature, the office of the Legislative Analyst, and the Department of Finance, a summative report of the effects of this article. The report shall include recommendations regarding the continuation, modification, or termination of the program. Subject to an appropriation of sufficient funds to the commission for this purpose the commission shall base its report on an evaluation of the California Mathematics Initiative for Teaching by an independent contractor selected in consultation with the Office of the Legislative Analyst. If in the judgment of the commission, available funds are insufficient to contract for an independent evaluation, the commission shall base its report on information received from school districts and county superintendents of schools pursuant to subdivision (e) of Section 44402.

44404. (a) A grant recipient shall expend not more than 6.5 percent of the grant funds received pursuant to this article for purposes of local program administration and management.

(b) Commencing with the 1999–2000 fiscal year, the commission shall not expend more than 5 percent of the amount appropriated to it for purposes of this chapter.

44405. This article shall become inoperative on June 30, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute that is enacted before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 69613.55 is added to the Education Code, to read:

69613.55. Notwithstanding Section 69613, the commission shall annually distribute a minimum of 2,000 awards to applicants who agree to obtain a teaching credential in mathematics or science.

SEC. 4. Section 69615.6 of the Education Code is amended to read:

69615.6. Beginning no later than the 1986–87 school year, and each school year thereafter, the commission shall issue warrants for the assumption of up to 500 student loans for program participants eligible under this article. The issuance of warrants shall be subject to funding to be provided in the Budget Act for each fiscal year. Beginning no later than the 1998–99 school year, and each school year thereafter, the commission shall issue warrants for the assumption of

up to 4,500 student loans for program participants eligible under this article.

SEC. 5. (a) The sum of one million five hundred eighty thousand dollars ($1,580,000) is hereby appropriated from the General Fund to the Commission on Teacher Credentialing in accordance with the following schedule:

(1) One million five hundred thousand dollars ($1,500,000) for the award of grants to school districts and county superintendents of schools pursuant to Article 13 (commencing with Section 44400) of Chapter 2 of Part 25 of the Education Code. Once awarded to school districts and county superintendents of schools, these funds are available for local expenditure for three years.

(2) Eighty thousand dollars ($80,000) for administration of Article 13 (commencing with Section 44400) of Chapter 2 of Part 25 of the Education Code.

(b) For purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by paragraph (1) of subdivision (a) shall be deemed to be "General Fund revenues appropriated to school districts," as defined in subdivision (c) of Section 41202 of the Education Code for the 1998–99 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 1998–99 fiscal year.

(c) It is the intent of the Legislature to continue to fund the California Mathematics Initiative for Teaching through the 2003–04 fiscal year.

CHAPTER 546

An act to amend Section 69959 of, and to add Section 69969.5 to, the Education Code, relating to student financial aid.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. Section 69959 of the Education Code is amended to read:

69959. (a) The following priorities shall be followed at the time of job referral and placement:

(1) The primary objective shall be to place a student in an educationally beneficial position that relates to the student's course of study, career objective, or the exploration of career objectives. Preference in awarding work-study positions shall be given to those

students able to locate employment related to their academic program or potential career.

(2) The program shall include and emphasize placements for students with off-campus, private, profit-making employers.

(3) The program shall also include, pursuant to Section 69969.5, work-study positions to offer tutorial instruction to pupils in various pupil outreach activities, which may include, but need not be limited to, tutoring in core courses, pupil mentoring, curriculum development, and academic counseling during or after regular school hours.

(b) It is the intent of the Legislature that each participating institution shall strive to place a significant number of students with off-campus private sector employers and public school districts. In evaluating an institution's progress in achieving placements with off-campus employers, the commission shall take into consideration the proximity of the campus to private sector jobs, local economic conditions, and other factors which may affect an institution's ability to place students in off-campus jobs.

SEC. 2. Section 69969.5 is added to the Education Code, to read:

69969.5. (a) There is hereby established the Teaching Intern Program within the California Work-Study Program, whereby work-study funding shall be available, subject to funds being appropriated for that purpose, to offer tutorial instruction to pupils in various pupil outreach activities. The pupil outreach activities may include, but need not be limited to, tutoring in core courses, pupil mentoring, curriculum development, and academic counseling during or after regular school hours.

(b) Any program that utilizes college students to tutor pupils and receives funding pursuant to this section, shall use the funding to increase the number of college students participating in the program.

(c) This section shall become operative only if an appropriation is made for its purposes in the Budget Act of 1998.

CHAPTER 547

An act to amend Section 44830 of, to add Sections 44274, 44274.2, 44274.4, and 44274.5 to, and to repeal Section 44275 of, the Education Code, relating to education, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. Section 44274 is added to the Education Code, to read:

44274. (a) The commission shall conduct periodic reviews, beginning in 1998, to determine whether any state has established teacher preparation standards that are at least comparable and equivalent to teacher preparation standards in California.

(b) When the commission determines, pursuant to subdivision (a), that the teacher preparation standards established by any state are at least comparable and equivalent to teacher preparation standards in California, the commission shall initiate negotiations with that state to provide reciprocity in teacher credentialing.

(c) The commission shall award a credential, permit, or certificate of eligibility to any applicant who holds or qualifies for an equivalent credential, permit, or certificate of eligibility awarded by a state that has established a reciprocity agreement with the commission pursuant to subdivision (b). The commission shall grant an appropriate credential to any applicant from another state who has completed teacher preparation that is at least comparable and equivalent to preparation that meets teacher preparation standards in California, as determined by the commission pursuant to this section, if both of the following circumstances exist:

(1) A reciprocity agreement with the other state is pending completion, or the other state has declined to enter into a reciprocity agreement with California.

(2) The applicant has met the requirements of California for teacher fitness by obtaining a certificate of clearance or eligibility from the commission.

(d) No reciprocity agreement established pursuant to subdivision (b) shall exempt an out-of-state applicant from submitting an identification card pursuant to Section 44340 and obtaining a certificate of clearance, credential, permit, or certificate of eligibility from the commission.

SEC. 2. Section 44274.2 is added to the Education Code, to read:

44274.2. (a) Notwithstanding Section 44227, Section 44259, or any other provision of this chapter, the commission shall issue a five-year preliminary multiple subject teaching credential authorizing instruction in a self-contained classroom or a five-year preliminary single subject teaching credential authorizing instruction in departmentalized classes to any applicant who has not been awarded a credential pursuant to Section 44274 and who fulfills all of the following requirements:

(1) A minimum of five years of full-time teaching experience in the subject of the credential sought.

(2) A valid corresponding elementary or secondary teaching credential from another state.

(3) A baccalaureate degree from a regionally accredited institution of higher education.

(4) Completion of teacher preparation at a regionally accredited institution of higher education.

(5) Submission of evidence of rigorous performance evaluations on which applicant received ratings of satisfactory or better.

(6) In the case of an applicant for a five-year preliminary single subject teaching credential, completion of an academic major in the subject area of the credential sought as determined by the commission.

(7) Passage of the state basic skills proficiency test administered pursuant to Section 44252. The commission may issue a one-year nonrenewable multiple or single subject teaching credential pursuant to paragraph (3) of subdivision (b) of Section 44252 prior to issuance of this preliminary credential to an applicant who has not passed the state basic skills proficiency test.

(b) The commission shall issue a professional clear multiple or single subject teaching credential to any applicant who documents, in a manner prescribed by the commission, that he or she fulfills each of the following requirements:

(1) The commission has issued to the applicant a preliminary five-year teaching credential pursuant to subdivision (a).

(2) The applicant has completed 150 clock hours of activities that contribute to his or her competence, performance, and effectiveness in the education profession, and that assist the applicant in meeting or exceeding standards for professional preparation established by the commission.

(c) The commission shall issue a five-year preliminary specialist instruction credential authorizing instruction of pupils with disabilities to any applicant who has not been awarded a credential pursuant to Section 44274 and who fulfills all of the following requirements:

(1) A minimum of five years of full-time teaching experience in the subject of the credential sought.

(2) A valid corresponding special education credential from another state.

(3) Completion of a professional preparation program in the requested education specialist category.

(4) A baccalaureate or higher degree from a regionally accredited institution of higher education.

(5) Submission of evidence of rigorous performance evaluations on which the applicant received ratings of satisfactory or better.

(6) Passage of the state basic skills proficiency test administered pursuant to Section 44252.

(d) The commission shall issue a professional clear instruction credential to any applicant who fulfills the requirements for the professional clear Level II Education Specialist Instruction Credential, as established by the commission.

SEC. 3. Section 44274.4 is added to the Education Code, to read:

44274.4. (a) Notwithstanding Section 44227, Section 44259, or any other provision of this chapter, the commission shall issue a three-year preliminary multiple subject teaching credential authorizing instruction in a self-contained classroom or a three-year preliminary single subject teaching credential authorizing instruction in departmentalized classes to any applicant who has not been awarded a credential pursuant to Section 44274 and who fulfills all of the following requirements:

(1) A minimum of three years of full-time teaching experience in the subject of the credential sought.

(2) A valid corresponding elementary or secondary teaching credential from another state.

(3) A baccalaureate degree from a regionally accredited institution of higher education.

(4) Completion of teacher preparation at a regionally accredited institution of higher education.

(5) Submission of evidence of rigorous performance evaluations for which the applicant received ratings of satisfactory or better.

(6) In the case of an applicant for a three-year preliminary single subject teaching credential, completion of an academic major in the subject area of the credential sought as determined by the commission.

(7) Passage of the state basic skills proficiency test administered pursuant to Section 44252. The commission may issue a one-year nonrenewable multiple or single subject teaching credential pursuant to paragraph (3) of subdivision (b) of Section 44252 prior to issuance of this preliminary credential to an applicant who has not passed the state basic skills proficiency test.

(b) The commission shall issue a professional clear multiple or single subject teaching credential to any applicant who documents, in a manner prescribed by the commission, that he or she fulfills each of the following requirements:

(1) The commission has issued to the applicant a preliminary three-year teaching credential pursuant to subdivision (a).

(2) The applicant has completed either of the following:

(A) A program of beginning teacher support and assessment established pursuant to Article 4.5 (commencing with Section 44279.1) of Chapter 2 of Part 25.

(B) An alternative program of beginning teacher induction that the commission determines, in collaboration with the Superintendent of Public Instruction, meets state standards for teacher induction.

SEC. 4. Section 44274.5 is added to the Education Code, to read:

44274.5. Notwithstanding Section 44227, Section 44259, or any other provision of this chapter, an applicant who holds a valid teaching credential from a state other than California, and who has met, at a minimum, every requirement for a California professional

multiple or single subject credential except the requirement of completion of a fifth year of study, may request the commission to determine whether the applicant has completed at least equivalent coursework. If the commission determines that the applicant has completed at least equivalent coursework, the commission shall issue the applicant an appropriate credential, if the applicant has submitted a fingerprint card and has met the requirements of California for teacher fitness by obtaining a certificate of clearance or eligibility, a credential, or a permit from the commission.

SEC. 5. Section 44275 of the Education Code is repealed.

SEC. 6. Section 44830 of the Education Code is amended to read:

44830. (a) The governing board of a school district shall employ for positions requiring certification qualifications, only persons who possess the qualifications therefor prescribed by law. It is contrary to the public policy of this state for any person or persons charged, by the governing boards, with the responsibility of recommending persons for employment by the boards to refuse or to fail to do so for reasons of race, color, religious creed, sex, or national origin of the applicants for that employment.

(b) Commencing on February 1, 1983, no school district governing board shall initially hire on a permanent, temporary, or substitute basis a certificated person seeking employment in the capacity designated in his or her credential unless that person has demonstrated basic skills proficiency as provided in Section 44252.5 or unless the person is exempted from the requirement by subdivisions (c), (d), (e), (f), (g), (h), (i), (j), (k), (*l*), or (m).

(1) The governing board of a school district, with the authorization of the Commission on Teacher Credentialing, may administer the basic skills proficiency test required under Sections 44252 and 44252.5.

(2) The superintendent, in conjunction with the commission and local governing boards, shall take steps necessary to ensure the effective implementation of this subdivision.

It is the intent of the Legislature that in effectively implementing the provisions of this subdivision, school district governing boards shall direct superintendents of schools to prepare for emergencies by developing a pool of qualified emergency substitute teachers. This preparation shall include public notice of the test requirements and of the dates and locations of administrations of the tests. District governing boards shall make special efforts to encourage individuals who are known to be qualified in other respects as substitutes to take the state basic skills proficiency test at its earliest administration.

(3) Demonstration of proficiency in reading, writing, and mathematics by any person pursuant to Section 44252 shall satisfy the requirements of this subdivision.

(c) (1) A certificated person shall not be required to take the state basic skills proficiency test if he or she has been employed in a position requiring certification in any school district within 39

months prior to employment with the district. A person holding a valid California credential who has not been employed in a position requiring certification in any school district within 39 months prior to employment and who has not taken the state basic skills proficiency test, but who has passed a basic skills proficiency examination which has been developed and administered by the school district offering that person employment, may be employed by the governing board of that school district on a temporary basis on the condition that he or she will take the state basic skills proficiency test within one year of the date of his or her employment.

(2) A certificated person who is employed for purposes of the class size reduction program set forth in Chapter 6.10 (commencing with Section 52120) of Part 28 shall not be required to take the state basic skills proficiency test if he or she has been employed in a position requiring certification in any school district within 39 months prior to employment with the district. A person holding a valid California credential who has not been employed in a position requiring certification in any school district within 39 months prior to employment for purposes of the class size reduction program and who has not taken the state basic skills proficiency test may be employed by the governing board of that school district on a temporary basis on the condition that he or she will take the state basic skills proficiency test within one calendar year of the date of his or her employment.

(d) Nothing in this section shall require a person employed solely for purposes of teaching adults in an apprenticeship program, approved by the Apprenticeship Standards Division of the Department of Industrial Relations, to pass the state proficiency assessment instrument as a condition of employment.

(e) Nothing in this section shall require the holder of a child care permit or a permit authorizing service in a development center for the handicapped to take the state basic skills proficiency test, so long as the holder of the permit is not required to have a baccalaureate degree.

(f) Nothing in this section shall require the holder of a credential issued by the commission who seeks an additional credential or authorization to teach, to take the state basic skills proficiency test.

(g) Nothing in this section shall require the holder of a credential to provide service in the health profession to take the state basic skills proficiency test, so long as that person does not teach in the public schools.

(h) If the basic skills proficiency test is not administered at the time of hiring, the holder of a vocational designated subject credential who has not already taken and passed the basic skills proficiency test may be hired on the condition that he or she will take the test at its next local administration.

(i) If the holder of a vocational designated subject credential does not pass a proficiency assessment in basic skills pursuant to this

section, he or she shall be given one year in which to retake and pass the proficiency assessment in basic skills. If at the expiration of the one-year period he or she has not passed the proficiency assessment in basic skills, he or she shall be subject to dismissal under procedures established in Article 3 (commencing with Section 44930) of Chapter 4.

(j) Nothing in this section shall be construed as requiring the holder of a vocational designated subject credential to pass the state basic skills proficiency test as a condition of employment. The governing board of each school district, or each governing board of a consortium of school districts, or each governing board involved in a joint powers agreement, which employs the holder of a vocational designated subject credential shall establish its own basic skills proficiency for these credentials and shall arrange for those individuals to be assessed. The basic skills proficiency criteria established by the governing board shall be at least equivalent to the test required by the district, or in the case of a consortium or a joint powers agreement, by any of the participating districts, for graduation from high school. The governing board or boards may charge a fee to individuals being tested to cover the costs of the test, including the costs of developing, administering, and grading the test.

(k) Nothing in this section shall be construed as requiring the holder of an adult education designated subject credential for other than academic subjects, who is employed in an instructional setting for 20 hours or less per week, to pass the state proficiency assessment as a condition of employment.

(*l*) Nothing in this section shall be construed to require certificated personnel employed under a foreign exchange program to take the state basic skills proficiency test. The maximum period of exemption under this subdivision shall be one year.

(m) Notwithstanding any other provision of law, a school district may hire a certificated teacher who has not taken the state basic skills proficiency test if that person has not yet been afforded the opportunity to take the test. The person shall then take the test at the earliest opportunity and may remain employed by the district pending the receipt of his or her test results.

SEC. 7. The amount of ninety thousand dollars ($90,000) is hereby appropriated from the Teacher Credentials Fund for the 1998-99 fiscal year for expenditure by the Commission on Teacher Credentialing for the purpose of conducting the initial review required by Section 44274 of the Education Code.

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

In order to ensure that proper educational services are provided for California pupils, it is necessary that this act take effect immediately.

CHAPTER 548

An act to amend Sections 44259 , 44277, and 44279.1 of, to amend the heading of Article 4.5 (commencing with Section 44279.1) of Chapter 2 of Part 25 of, to add Section 44320.2 to, to repeal Section 44259.2 of, and to repeal and add Section 44259.1 of, the Education Code, relating to school employees.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. It is the intent of the Legislature by enacting the act adding this section and by enacting the Budget Act of 1998 to implement standards that govern all aspects of teacher preparation, including subject matter knowledge, professional preparation, induction, and credential renewal; to strengthen teacher preparation by better integrating theory and practice, and to expand teacher induction programs and programs to attract qualified persons to teaching.

SEC. 2. Section 44259 of the Education Code is amended to read:

44259. (a) Except as provided in subparagraphs (A) and (C) of paragraph (3) of subdivision (b), each program of professional preparation for multiple or single subject teaching credentials shall not include more than one year of, or the equivalent of one-fifth of a five-year program in, professional preparation.

(b) The minimum requirements for the preliminary multiple or single subject teaching credential, are all of the following:

(1) A baccalaureate degree or higher degree from a regionally accredited institution of postsecondary education. Except as provided in subdivision (c) of Section 44227, the baccalaureate degree shall not be in professional education. The commission shall encourage accredited institutions to offer undergraduate minors in education and special education to students who intend to become teachers.

(2) Passage of the state basic skills examination that is developed and administered by the commission pursuant to Section 44252.5.

(3) Satisfactory completion of a program of professional preparation that has been accredited by the committee on accreditation on the basis of standards of program quality and effectiveness that have been adopted by the commission. Subject to the availability of funds in the annual Budget Act for this purpose, and

in accordance with the commission's assessment and performance standards, each program shall include a teaching performance assessment as set forth in Section 44320.2 which is aligned with the California Standards for the Teaching Profession. The commission shall ensure that each candidate recommended for a credential or certificate has demonstrated satisfactory ability to assist students to meet or exceed state content and performance standards for pupils adopted pursuant to subdivision (a) of Section 60605. Programs that meet this requirement for professional preparation shall include any of the following:

(A) Integrated programs of subject matter preparation and professional preparation pursuant to subdivision (a) of Section 44259.1.

(B) Postbaccalaureate programs of professional preparation, pursuant to subdivision (b) of Section 44259.1.

(C) Internship programs of professional preparation, pursuant to Section 44321, Article 7.5 (commencing with Section 44325), Article 11 (commencing with Section 44380), and Article 3 (commencing with Section 44450) of Chapter 3.

(4) Study of alternative methods of developing English language skills, including the study of reading as described in subparagraphs (A) and (B), among all pupils, including those for whom English is a second language, in accordance with the commission's standards of program quality and effectiveness. The study of reading shall meet the following requirements:

(A) Commencing January 1, 1997, satisfactory completion of comprehensive reading instruction that is research-based and includes all of the following:

(i) The study of organized, systematic, explicit skills including phonemic awareness, direct, systematic, explicit phonics, and decoding skills.

(ii) A strong literature, language, and comprehension component with a balance of oral and written language.

(iii) Ongoing diagnostic techniques that inform teaching and assessment.

(iv) Early intervention techniques.

(v) Guided practice in a clinical setting.

(B) For the purposes of this section, "direct, systematic, explicit phonics" means phonemic awareness, spelling patterns, the direct instruction of sound/symbol codes and practice in connected text and the relationship of direct, systematic, explicit phonics to the components set forth in clauses (i) to (v), inclusive.

A program for the multiple subjects credential also shall include the study of integrated methods of teaching language arts.

(5) Completion of a subject matter program that has been approved by the commission on the basis of standards of program quality and effectiveness pursuant to Article 6 (commencing with Section 44310) or passage of a subject matter examination pursuant

to Article 5 (commencing with Section 44280). The commission shall ensure that subject matter standards and examinations are aligned with the state content and performance standards adopted for pupils pursuant to subdivision (a) of Section 60605.

(6) Demonstration of a knowledge of the principles and provisions of the Constitution of the United States pursuant to Section 44335.

(7) Commencing January 1, 2000, demonstration, in accordance with the commission's standards of program quality and effectiveness, of basic competency in the use of computers in the classroom.

(c) The minimum requirements for the professional clear multiple or single subject teaching credential shall include all of the following requirements:

(1) Possession of a valid preliminary teaching credential, as prescribed in subdivision (b), possession of a valid equivalent credential or certificate, or completion of equivalent requirements as determined by the commission. A candidate who has satisfied the requirements of subdivision (b) for a preliminary credential, including completion of an accredited internship program of professional preparation, shall be determined by the commission to have fulfilled the requirements of paragraph (2) for beginning teacher induction if the accredited internship program has fulfilled induction standards and been approved as set forth in this subdivision.

(2) Subject to the availability of funds in the annual Budget Act to provide statewide access to eligible beginning teachers, as defined in subdivision (d) of Section 44279.1, completion of a program of beginning teacher induction, including any of the following:

(A) A program of beginning teacher support and assessment approved by the commission and the Superintendent of Public Instruction pursuant to Section 44279.1, a provision of the Marian Bergeson Beginning Teacher Support and Assessment System.

(B) An alternative program of beginning teacher induction that is provided by one or more local education agencies and has been approved by the commission and the superintendent on the basis of initial review and periodic evaluations of the program in relation to appropriate standards of credential program quality and effectiveness that have been adopted by the commission, the superintendent, and the State Board of Education pursuant to this subdivision. The standards for alternative programs shall encourage innovation and experimentation in the continuous preparation and induction of beginning teachers. Any alternative program of beginning teacher induction that has met state standards pursuant to this subdivision may apply for state funding pursuant to Sections 44279.1 and 44279.2.

(C) An alternative program of beginning teacher induction that is sponsored by a regionally accredited college or university, in cooperation with one or more local school districts, that addresses the

individual professional needs of beginning teachers and meets the commission's standards of induction. The commission shall ensure that preparation and induction programs that qualify candidates for professional credentials extend and refine each beginning teacher's professional skills in relation to the California Standards for the Teaching Profession and the standards of student performance adopted pursuant to Section 60605.

(3) Preparation, in accordance with commission standards, that addresses the following:

(A) Study of health education, including study of nutrition, cardiopulmonary resuscitation, and the physiological and sociological effects of abuse of alcohol, narcotics, and drugs and the use of tobacco. Training in cardiopulmonary resuscitation shall also meet the standards established by the American Heart Association or the American Red Cross.

(B) Study and field experience in methods of delivering appropriate educational services to students with exceptional needs in regular education programs.

(C) Study, in accordance with the commission's standards of program quality and effectiveness, of advanced computer-based technology, including the uses of technology in educational settings.

(4) The commission shall develop and implement standards of program quality that provide for the areas of study listed in subparagraphs (A) to (C), inclusive of paragraph (3), starting in professional preparation and continuing through induction.

(5) Completion of an approved fifth-year program after completion of a baccalaureate degree at a regionally accredited institution, except that the commission shall eliminate this requirement for any candidate who has completed an induction program that has been approved for the professional clear credential pursuant to paragraph (2).

(d) A credential that was issued prior to the effective date of this section shall remain in force as long as it is valid under the laws and regulations that were in effect on the date it was issued. The commission may not, by regulation, invalidate an otherwise valid credential unless it issues to the holder of the credential, in substitution, a new credential authorized by another provision in this chapter that is no more restrictive than the credential for which it was substituted with respect to the kind of service authorized and the grades, classes, or types of schools in which it authorizes service.

(e) A credential program that is approved by the commission may not deny an individual access to that program solely on the grounds that the individual obtained a teaching credential through completion of an internship program when that internship program has been accredited by the commission.

(f) Notwithstanding this section, persons who were performing teaching services as of January 1, 1999, pursuant to the language of this section that was in effect prior to that date, may continue to

perform those services without complying with any requirements that may be added by the amendments adding this subdivision.

(g) Subparagraphs (A) and (B) of paragraph (4) of subdivision (b) do not apply to any person who, as of January 1, 1997, holds a multiple or single subject teaching credential, or to any person enrolled in a program of professional preparation for a multiple or single subject teaching credential as of January 1, 1997, who subsequently completes that program. It is the intent of the Legislature that the requirements of subparagraphs (A) and (B) of paragraph (4) of subdivision (b) be applied only to persons who enter a program of professional preparation on or after January 1, 1997.

(h) The commission shall grant teaching credentials based on the requirements for those credentials that were in effect on December 31, 1998, to candidates who were in the process of meeting those requirements for teaching credentials before the effective date of the commission's implementation of this section.

SEC. 3. Section 44259.1 of the Education Code is repealed.

SEC. 4. Section 44259.1 is added to the Education Code, to read:

44259.1. (a) An integrated program of professional preparation shall enable candidates for teaching credentials to engage in professional preparation concurrent with subject matter preparation, while completing baccalaureate degrees at regionally accredited postsecondary institutions. An integrated program shall provide opportunities for candidates to complete intensive field experiences in public elementary and secondary schools early in the undergraduate sequence. The development and implementation of an integrated program shall be based on intensive collaboration among subject matter departments and education units within postsecondary institutions, and local public elementary and secondary school districts. The commission shall encourage postsecondary institutions to offer integrated programs of professional preparation. In approving integrated programs, the commission shall not compromise or reduce its standards of subject matter preparation pursuant to Article 6 (commencing with Section 44310) or its standards of professional preparation pursuant to paragraph (3) of subdivision (b) of Section 44259.

(b) A postbaccalaureate program of professional preparation shall enable candidates for teaching credentials to commence and complete professional preparation after they have completed baccalaureate degrees at regionally accredited institutions. The development and implementation of a postbaccalaureate program of professional preparation shall be based on intensive collaboration among the postsecondary institution and local public elementary and secondary school districts.

SEC. 5. Section 44259.2 of the Education Code is repealed.

SEC. 6. Section 44277 of the Education Code is amended to read:

44277. The Legislature recognizes that effective professional growth must continue to occur throughout the careers of all teachers, in order that teachers remain informed of changes in pedagogy, subject matter, and pupil needs. In enacting this section, it is the intent of the Legislature to establish professional growth requirements that give individual teachers a wide range of options to pursue as well as significant roles in determining the course of their professional growth.

(a) The minimum requirements for maintaining the validity of the clear multiple or single subject teaching credential pursuant to Section 44251 shall be both of the following:

(1) Successful service as a classroom teacher or successful service authorized by a services credential. The minimum length of service shall be equivalent to one-half of a school year.

(2) Completion of an individual program of professional growth as prescribed in this section and by the commission.

(b) An individual program of professional growth shall consist of a minimum of 150 clock hours of participation in activities that are aligned with the California Standards for the Teaching Profession that contribute to competence, performance, or effectiveness in the profession of education and the teacher's classroom assignments. Acceptable activities shall be defined by the commission to include, among other acceptable activities, the completion of courses offered by regionally accredited colleges and universities, including instructor-led interactive courses delivered through online technologies; participation in professional conferences, workshops, teacher center programs, or staff development programs; service as a mentor teacher pursuant to Section 44496; participation in school curriculum development projects; participation in systematic programs of observation and analysis of teaching; service in a leadership role in a professional organization; and participation in educational research or innovation efforts. Employing agencies and employees' bargaining agents may negotiate to agree on the terms of programs of professional growth within their jurisdictions, provided that the agreements shall be consistent with this section.

(c) An individual program of professional growth shall be developed and planned by the holder of a clear teaching credential.

(d) Effective January 1, 1991, an individual program of professional growth may include a basic course in cardiopulmonary resuscitation, which includes training in the subdiaphragmatic abdominal thrust (also known as the "Heimlich maneuver") and meets or exceeds the standards established by the American Heart Association or the American Red Cross for courses in that subject. A teacher's participation in this training option shall count towards the minimum 150 clock hours required to satisfy the professional growth requirements.

(e) Before a holder of a clear teaching credential commences or amends an individual program of professional growth, a school

principal, a mentor teacher provided for in Section 44496, or other district designee shall certify to the credential holder that the planned program or amendment complies with this section and with regulations of the commission.

(f) A clear teaching credential shall be deemed to remain valid so long as the holder of the credential, at five-year intervals, submits to the commission verification by a school principal, a mentor teacher, or other district designee that the holder has satisfied the minimum requirements specified in subdivision (a). In the absence of adequate verification, the commission shall invalidate the credential. Verification by a school principal, a mentor teacher, or other district designee shall be independent of any evaluation of the performance of the holder of the clear teaching credential that is conducted for the purpose of determining the credential holder's employment status. The arbitrary refusal of a school principal, a mentor teacher, or other district designee to verify completion of an individual program of professional growth meeting the requirements of this section and commission regulations shall constitute grounds for an appeal as prescribed in Section 44278.

SEC. 7. The heading of Article 4.5 (commencing with Section 44279.1) of Chapter 2 of Part 25 of the Education Code is amended to read:

Article 4.5. Marian Bergeson Beginning Teacher Support and Assessment System

SEC. 8. Section 44279.1 of the Education Code is amended to read:

44279.1. (a) The Legislature finds and declares that the beginning years of a teacher's career are a critical time in which it is necessary that intensive professional development and assessment occur. The Legislature recognizes that the public invests heavily in the preparation of prospective teachers, and that more than half of all new teachers leave some California school districts after one or two years in the classroom. Intensive professional development and assessment are necessary to build on the preparation that precedes initial certification, to transform academic preparation into practical success in the classroom, to retain greater numbers of capable beginning teachers, and to remove novices who show little promise as teachers. It is the intent of the Legislature that the commission and the superintendent develop and implement policies to govern the support and assessment of beginning teachers, as a condition for the professional certification of those teachers in the future.

(b) There is hereby established the California Beginning Teacher Support and Assessment System, to be administered jointly by the commission and the superintendent. In administering the system, the commission and the superintendent shall approve the most cost-effective programs of support and assessment. The commission

and the superintendent shall also ensure that programs meet the Standards of Quality and Effectiveness for Beginning Teacher Support and Assessment adopted by the commission in 1997 and that local programs support beginning teachers in meeting the competencies described in the California Standards for the Teaching Profession adopted by the commission in January 1997. The system shall do all of the following:

(1) Provide an effective transition into the teaching career for first-year and second-year teachers in California.

(2) Improve the educational performance of pupils through improved training, information, and assistance for new teachers.

(3) Enable beginning teachers to be effective in teaching pupils who are culturally, linguistically, and academically diverse.

(4) Ensure the professional success and retention of new teachers.

(5) Ensure that a support provider provides intensive individualized support and assistance to each participating beginning teacher.

(6) Improve the rigor and consistency of individual teacher performance assessments and the usefulness of assessment results to teachers and decisionmakers.

(7) Establish an effective, coherent system of performance assessments that are based on the California Standards for the Teaching Profession adopted by the commission in January 1997.

(8) Examine alternative ways in which the general public and the educational profession may be assured that new teachers who remain in teaching have attained acceptable levels of professional competence.

(9) Ensure that an individual induction plan is in place for each participating beginning teacher and is based on an ongoing assessment of the development of the beginning teacher.

(10) Ensure continuous program improvement through ongoing research, development, and evaluation.

(c) Participation in the system shall be voluntary for teachers, school districts, and county offices of education and participation by certificated employees shall not be made a condition of employment. The commission and the superintendent shall adopt and implement criteria and standards for participation in the system, including criteria regarding the eligibility of teachers and standards of local program quality and intensity for schools, school districts, county offices of education, colleges, universities, and other educational and professional organizations. The criteria and standards shall be consistent with the purposes of the system.

(d) For the purpose of this article, unless the context otherwise requires, "beginning teacher," means a teacher with a valid California credential, as defined in Section 44259, or an intern participating in the program established pursuant to Article 11 (commencing with Section 44380) of Chapter 2.5, who is serving in the first year or second year of service.

(e) For a beginning teacher who holds a professional clear teaching credential that is subject to the requirements of subdivisions (b) and (c) of Section 44277, participation in the program may, at the teacher's discretion, serve as part or all of the individual program of professional growth.

(f) The superintendent and the commission shall disseminate the California Standards for the Teaching Profession adopted by the commission in January 1997 to colleges, universities, school districts, county offices of education, and professional associations, who shall be encouraged to use the standards in efforts to improve teacher preparation and support programs. Performance assessments developed under this article shall be designed to provide useful, helpful feedback to beginning teachers and their support providers. That information shall not be used for employment-related evaluations, as a condition of employment, or as a basis for terminating employment.

(g) It is the intent of the Legislature that the commission and the superintendent establish a statewide teacher induction program that supports locally designed, high quality induction programs that provide individualized support and formative assessment for all participating beginning teachers as defined in subdivision (d). At the discretion of the local beginning teacher support and assessment system teacher induction program, funds allocated to a program on the basis of eligible beginning teachers may be used to provide support, assistance, and preparation services to other credential candidates who are in their first or second year of employment as a classroom teacher.

(h) This article shall be known, and may be cited, as the Marian Bergeson Beginning Teacher Support and Assessment System.

SEC. 9. Section 44320.2 is added to the Education Code, to read:

44320.2. (a) The Legislature finds and declares that the competence and performance of teachers are among the most important factors in influencing the quality and effectiveness of education in elementary and secondary schools.

(b) For a program of professional preparation to satisfy the requirements of paragraph (3) of subdivision (b) of Section 44259, the program shall include a teaching performance assessment that is aligned with the California Standards for the Teaching Profession and that is congruent with state content and performance standards for pupils adopted pursuant to subdivision (a) of Section 60605. In implementing this requirement, institutions or agencies may do the following:

(1) Voluntarily develop an assessment for approval by the commission. Approval of any locally developed performance assessment shall be based on assessment quality standards adopted by the commission, which shall encourage the use of alternative assessment methods including portfolios of teaching artifacts and practices.

(2) Participate in an assessment training program for assessors and implement the commission developed assessment.

(3) Request that the commission conduct the performance assessment for its candidates.

(c) The performance assessment shall not be incorporated into professional preparation programs without streamlining the existing teacher credential requirements. The commission shall implement the performance assessment in a manner that does not increase the number of assessments required for teacher credential candidates prepared in this state. Each candidate shall be assessed during the normal term or duration of the candidate's preparation program as provided by law.

(d) Subject to the availability of funds in the annual Budget Act, the commission shall perform the following duties with respect to the performance assessment:

(1) Assemble and convene an expert panel to advise the commission about performance standards and developmental scales for teaching credential candidates and the design, content, administration, and scoring of the assessment. Not fewer than one-third of the panel members shall be classroom teachers in California public schools.

(2) Design, develop, and implement assessment standards and an institutional assessor training program for the sponsors of professional preparation programs to use if they choose to use the commission developed assessment.

(3) Design, develop, adopt, administer, and score the assessment for candidates that request direct administration of the assessment by the commission.

(4) Establish a review panel to examine each assessment developed by an institution or agency in relation to the standards set by the commission and advise the commission regarding approval of each assessment system.

(5) Initially and periodically analyze the validity of assessment content and the reliability of assessment scores that are established pursuant to this section.

(6) Establish and implement appropriate standards for satisfactory performance in assessments that are established pursuant to this section. The commission shall ensure that oral proficiency in English is a criterion for scoring each candidate's performance in each assessment.

(7) Analyze possible sources of bias in the performance assessment and act promptly to eliminate any bias that is discovered.

(8) Collect and analyze background information provided by candidates who participate in the performance assessment, and report and interpret the individual and aggregated results of the assessment.

(9) Examine and revise, as necessary, the institutional accreditation system pursuant to Article 10 (commencing with

Section 44370), for the purpose of providing a strong assurance to teaching candidates that ongoing opportunities are available in each credential preparation program that is offered pursuant to Section 44320, Article 6 (commencing with Section 44310), Article 7.5 (commencing with Section 44325), or Article 3 (commencing with Section 44450) of Chapter 3 for candidates to acquire the knowledge, skills, and abilities measured by the assessment system.

(10) Ensure that the aggregated results of the assessment for groups of candidates who have completed a credential program are used as one source of information about the quality and effectiveness of that program.

(e) The commission shall ensure that each performance assessment pursuant to subdivision (b) is aligned with the California Standards for the Teaching Profession. To the maximum feasible extent, each performance assessment shall be ongoing and blended into the preparation program, and shall produce the following benefits for credential candidates, sponsors of preparation programs, and local education agencies that employ program graduates:

(1) The performance assessment shall be designed to provide formative assessment information during the preparation program for use by the candidate, instructors, and supervisors for the purpose of improving the candidate's teaching knowledge, skill, and ability.

(2) The performance assessment results shall be reported so that they may serve as one basis for a recommendation by the program sponsor that the commission award a teaching credential to a candidate who has successfully met the performance assessment standards.

(3) The formative assessment information pursuant to paragraph (1) and the performance assessment results pursuant to paragraph (2) shall be reported so that they may serve as one basis for the new teacher's individual induction plan pursuant to Section 44279.2.

(f) The teaching performance assessment that is offered in accordance with paragraph (3) of subdivision (b) shall be subject to Sections 44235.1 and 44298. Assessments in accordance with paragraphs (1) and (2) of subdivision (b), including the commission's administrative costs, shall be subject to the annual Budget Act.

CHAPTER 549

An act to amend Section 790 of the Penal Code, relating to murder.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. Section 790 of the Penal Code is amended to read:

790. (a) The jurisdiction of a criminal action for murder or manslaughter is in the county where the fatal injury was inflicted or in the county in which the injured party died or in the county in which his or her body was found. However, if the defendant is indicted in the county in which the fatal injury was inflicted, at any time before his or her trial in another county, the sheriff of the other county shall, if the defendant is in custody, deliver the defendant upon demand to the sheriff of the county in which the fatal injury was inflicted. When the fatal injury was inflicted and the injured person died or his or her body was found within five hundred yards of the boundary of two or more counties, jurisdiction is in either county.

(b) In any case in which a defendant is charged with a special circumstance pursuant to paragraph (3) of subdivision (a) of Section 190.2, the jurisdiction for any charged murder, and for any crimes properly joinable with that murder, shall be in any county that has jurisdiction pursuant to subdivision (a) for one or more of the murders charged in a single complaint or indictment as long as the charged murders are "connected together in their commission," as that phrase is used in Section 954, and subject to a hearing in the jurisdiction where the prosecution is attempting to consolidate the charged murders. If the charged murders are not joined or consolidated, the murder that was charged outside of the county that has jurisdiction pursuant to subdivision (a), shall be returned to that county.

CHAPTER 550

An act to amend Section 290.4 of, and to add Section 3003.5 to, the Penal Code, relating to sex offenders.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. Section 290.4 of the Penal Code is amended to read:

290.4. (a) (1) The Department of Justice shall continually compile information as described in paragraph (2) regarding any person required to register under Section 290 for a conviction of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289; Section 220, except assault to commit mayhem; Section 243.4, provided that the offense is a felony; paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261; Section 264.1; Section 266, provided that the offense is a felony; Section 266c,

provided that the offense is a felony; Section 266j; Section 267; paragraph (1) of subdivision (b) of Section 286, provided that the offense is a felony; paragraph (2) of subdivision (b), subdivision (c), (d), (f), (g), (i), (j), or (k) of Section 286; Section 288; paragraph (1) of subdivision (b) of Section 288a, provided that the offense is a felony; paragraph (2) of subdivision (b), (c), (d), (f), (g), (i), (j), or (k) of Section 288a; Section 288.5; subdivision (a), (b), (d), (e), (f), (g), or (h) of Section 289, provided that the offense is a felony; subdivision (i) or (j) of Section 289; Section 647.6; or the statutory predecessor of any of these offenses or any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in this section. This requirement shall not be applied to a person whose duty to register has been terminated pursuant to paragraph (5) of subdivision (d) of Section 290, or to a person who has been relieved of his or her duty to register under Section 290.5.

(2) The information shall be categorized by community of residence and ZIP Code. The information shall include the names and known aliases of the person, photograph, a physical description, gender, race, date of birth, the criminal history, and the address, including ZIP Code, in which the person resides, and any other information that the Department of Justice deems relevant, not including information that would identify the victim.

(3) The department shall operate a "900" telephone number that members of the public may call and inquire whether a named individual is listed among those described in this subdivision. The caller shall furnish his or her first name, middle initial, and last name. The department shall ascertain whether a named person reasonably appears to be a person so listed and provide the caller with the information described in paragraph (2), except the department shall not disclose the street address or criminal history of a person listed, except to disclose the ZIP Code area in which the person resides and to describe the specific crimes for which the registrant was required to register. The department shall decide whether the named person reasonably appears to be a person listed, based upon information from the caller providing information that shall include (A) an exact street address, including apartment number, social security number, California driver's license or identification number, or birth date along with additional information that may include any of the following: name, hair color, eye color, height, weight, distinctive markings, ethnicity; or (B) any combination of at least six of the above listed characteristics if an exact birth date or address is not available. If three of the characteristics provided include ethnicity, hair color, and eye color, a seventh identifying characteristic shall be provided. Any information identifying the victim by name, birth date, address, or relation to the registrant shall be excluded by the department.

(4) (A) On or before July 1, 1997, the department shall provide a CD-ROM or other electronic medium containing the information described in paragraph (2), except the person's street address and criminal history other than the specific crimes for which the person was required to register, for all persons described in paragraph (1) of subdivision (a), and shall update and distribute the CD-ROM or other electronic medium on a monthly basis to the sheriff's department in each county, municipal police departments of cities with a population of more than 200,000, and each law enforcement agency listed in subparagraph (I) of paragraph (1) of subdivision (n) of Section 290. These law enforcement agencies may obtain additional copies by purchasing a yearly subscription to the CD-ROM or other electronic medium from the Department of Justice for a yearly subscription fee. The Department of Justice, the sheriff's departments, and the municipal police departments of cities with a population of more than 200,000 shall make, and the other law enforcement agencies may make, the CD-ROM or other electronic medium available for viewing by the public in accordance with the following: The agency may require that a person applying to view the CD-ROM or other electronic medium express an articulable purpose in order to have access thereto. The applicant shall provide identification in the form of a California driver's license or California identification card, showing the applicant to be at least 18 years of age, and shall sign a statement, on a form provided by the Department of Justice, stating that the applicant is not a registered sex offender, that he or she understands the purpose of the release of information is to allow members of the public to protect themselves and their children from sex offenders, and he or she understands it is unlawful to use information obtained from the CD-ROM or other electronic medium to commit a crime against any registrant or to engage in illegal discrimination or harassment of any registrant. The signed statement shall be maintained in a file in the designated law enforcement agency's office.

(B) The records of persons requesting to view the CD-ROM or other electronic medium are confidential, except that a copy of the applications requesting to view the CD-ROM or other electronic medium may be disclosed to law enforcement agencies for law enforcement purposes.

(C) Any information identifying the victim by name, birth date, address, or relationship to the registrant shall be excluded from the CD-ROM or other electronic medium.

(5) (A) The income from the operation of the "900" telephone number shall be deposited in the Sexual Predator Public Information Account, which is hereby established within the Department of Justice for the purpose of the implementation of this section by the Department of Justice, including all actual and reasonable costs related to establishing and maintaining the information described in

subdivision (a) and the CD-ROM or other electronic medium described in this subdivision.

(B) The moneys in the Sexual Predator Public Information Account shall consist of income from the operation of the "900" telephone number program authorized by this section, proceeds of the loan made pursuant to Section 6 of the act adding this section, and any other funds made available to the account by the Legislature. Moneys in the account shall be available to the Department of Justice upon appropriation by the Legislature for the purpose specified in subparagraph (A).

(C) When the "900" telephone number is called, a preamble shall be played before charges begin to accrue. The preamble shall run at least the length of time required by federal law and shall provide the following information:

(i) Notice that the caller's telephone number will be recorded.

(ii) The charges for use of the "900" telephone number.

(iii) Notice that the caller is required to identify himself or herself to the operator.

(iv) Notice that the caller is required to be 18 years of age or older.

(v) A warning that it is illegal to use information obtained through the "900" telephone number to commit a crime against any registrant or to engage in illegal discrimination or harassment against any registrant.

(vi) Notice that the caller is required to have the birth date, California driver's license or identification number, social security number, address, or other identifying information regarding the person about whom information is sought in order to achieve a positive identification of that person.

(vii) A statement that the number is not a crime hotline and that any suspected criminal activity should be reported to local authorities.

(viii) A statement that the caller should have a reasonable suspicion that a person is at risk.

(D) The Department of Justice shall expend no more than six hundred thousand dollars ($600,000) per year from any moneys appropriated by the Legislature from the account.

(b) (1) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to, any other punishment, by a five-year term of imprisonment in the state prison.

(2) Any person who, without authorization, uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(c) The record of the compilation of offender information on each CD-ROM or other electronic medium distributed pursuant to this section shall be used only for law enforcement purposes and the

public safety purposes specified in this section and Section 290. This record shall not be distributed or removed from the custody of the law enforcement agency that is authorized to retain it. Information obtained from this record shall be disclosed to a member of the public only as provided in this section or Section 290, or any other statute expressly authorizing it.

Any person who copies, distributes, discloses, or receives this record or information from it, except as authorized by law, is guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed six months or by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. This subdivision shall not apply to a law enforcement officer who makes a copy as part of his or her official duties in the course of a criminal investigation, court case, or as otherwise authorized by subdivision (n) of Section 290. This subdivision shall not prohibit copying information by handwriting.

Notwithstanding Section 6254.5 of the Government Code, disclosure of information pursuant to this section is not a waiver of exemptions under Chapter 3.5 (commencing with Section 6250) of Title 1 of Division 7 of the Government Code and does not affect other statutory restrictions on disclosure in other situations.

(d) Unauthorized removal or destruction of the CD-ROM or other electronic medium from the offices of any law enforcement agency is a misdemeanor, punishable by imprisonment in a county jail not to exceed one year, or by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(e) (1) A person is authorized to use information disclosed pursuant to this section only to protect a person at risk.

This section shall not affect authorized access to, or use of, information pursuant to, among other provisions, Sections 11105 and 11105.3 of this code, Section 226.55 of the Civil Code, Sections 777.5 and 14409.2 of the Financial Code, Sections 1522.01 and 1596.871 of the Health and Safety Code, and Section 432.7 of the Labor Code.

(2) Except as authorized under paragraph (1) or any other provision of law, use of any information, for purposes relating to any of the following, and that is disclosed pursuant to this section, is prohibited:

(A) Health insurance.

(B) Insurance.

(C) Loans.

(D) Credit.

(E) Employment.

(F) Education, scholarships, or fellowships.

(G) Housing or accommodations.

(H) Benefits, privileges, or services provided by any business establishment.

(3) (A) Any use of information disclosed pursuant to this section for purposes other than those provided by paragraph (1) of

subdivision (e) or in violation of paragraph (2) of subdivision (e) shall make the user liable for the actual damages, and any amount that may be determined by a jury or a court sitting without a jury, not exceeding three times the amount of actual damage, and not less than two hundred fifty dollars ($250), and attorney's fees, exemplary damages, or a civil penalty not exceeding twenty-five thousand dollars ($25,000).

(B) Whenever there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of misuse of the "900" telephone number in violation of paragraph (2) of subdivision (e), the Attorney General, any district attorney, or city attorney, or any person aggrieved by the misuse of that number is authorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or group of persons responsible for the pattern or practice of misuse. The foregoing remedies shall be independent of any other remedies or procedures that may be available to an aggrieved party under other provisions of law, including Part 2 (commencing with Section 43) of Division 1 of the Civil Code.

(f) This section shall not be deemed to authorize the publication, distribution, or disclosure of the address of any person about whom information can be published, distributed, or disclosed pursuant to this section.

(g) Community notification shall be governed by subdivisions (m) and (n) of Section 290.

(h) The Department of Justice shall submit to the Legislature an annual report on the operation of the "900" telephone number required by paragraph (3) of subdivision (a) on July 1, 1996, July 1, 1997, and July 1, 1998. The annual report shall include all of the following:

(1) Number of calls received.

(2) Amount of income earned per year through operation of the "900" telephone number.

(3) A detailed outline of the amount of money expended and the manner in which it was expended for purposes of this section.

(4) Number of calls that resulted in an affirmative response and the number of calls that resulted in a negative response with regard to whether a named individual was listed pursuant to subdivision (a).

(5) Number of persons listed pursuant to subdivision (a).

(6) A summary of the success of the "900" telephone number program based upon selected factors.

(i) Any law enforcement agency and employees of law enforcement agencies shall be immune from liability for good faith conduct under this section. For the purposes of this section, "law enforcement agency" means the Attorney General, any district attorney, and any state agency expressly authorized by statute to investigate or prosecute law violators.

(j) On or before July 1, 2000, the Department of Justice shall make a report to the Legislature concerning the changes to the operation of the "900" telephone number program made by the amendments to this section by Chapter 908 of the Statutes of 1996. The report shall include all of the following:

(1) Number of calls received by county.

(2) Number of calls that resulted in an affirmative response and the number of calls that resulted in a negative response with regard to whether a named individual was listed pursuant to subdivision (a).

(3) Number of persons listed pursuant to subdivision (a).

(4) Statistical information concerning prosecutions of persons for misuse of the "900" telephone number program, including the outcomes of those prosecutions.

(5) A summary of the success of the "900" telephone number based upon selected factors.

(k) The registration and public notification provisions of this section are applicable to every person described in these sections, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in these sections, regardless of when it was committed.

(*l*) No later than December 31, 1998, the Department of Justice shall prepare an informational pamphlet that shall be mailed to any member of the public who makes an inquiry using the "900" telephone number required by this section and who provides an address. The pamphlet shall provide basic information concerning appropriate steps parents, guardians, and other responsible adults can take to ensure a child is safe from a suspected child molester, including, but not limited to, how to identify suspicious activity by an adult, common facts and myths about child molesters, and how to obtain additional help and information. A notice to callers to the "900" telephone number that they will receive the pamphlet, if an address is provided, shall be included in the preamble required by this section.

(m) This section shall remain operative only until January 1, 2001, and as of that date is repealed unless a later enacted statute, which becomes effective on or before that date, deletes or extends that date.

SEC. 2. Section 3003.5 is added to the Penal Code, to read:

3003.5. Notwithstanding any other provision of law, when a person is released on parole after having served a term of imprisonment in state prison for any offense for which registration is required pursuant to Section 290, that person may not, during the period of parole, reside in any single family dwelling with any other person also required to register pursuant to Section 290, unless those persons are legally related by blood, marriage, or adoption. For

purposes of this section, "single family dwelling" shall not include a residential facility which serves six or fewer persons.

CHAPTER 551

An act to add Sections 4017.1 and 5071 to the Penal Code, and to add Section 219.5 to the Welfare and Institutions Code, relating to corrections.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. Section 4017.1 is added to the Penal Code, to read:

4017.1. (a) Any person confined in a county jail, industrial farm, road camp, or city jail who is required or permitted by an order of the board of supervisors or city council to perform work shall not be employed to perform any function that provides access to personal information including, but not limited to, social security numbers, addresses, driver's license numbers, credit card numbers, or telephone numbers of private individuals if that person has been convicted of an offense described by any of the following categories:

(1) An offense involving forgery or fraud.

(2) An offense involving misuse of a computer.

(3) An offense for which the person is required to register as a sex offender pursuant to Section 290.

(4) An offense involving any misuse of the personal or financial information of another person.

(b) Any person confined in a county jail, industrial farm, road camp, or city jail who has access to any personal information shall disclose that he or she is confined before taking any personal information from anyone.

(c) This section shall not apply to inmates in employment programs or public service facilities where incidental contact with personal information may occur.

SEC. 2. Section 5071 is added to the Penal Code, to read:

5071. (a) The Director of Corrections shall not assign any prison inmate to employment that provides that inmate with access to personal information including, but not limited to, social security numbers, addresses, driver's license numbers, credit card numbers, or telephone numbers of private individuals if that person has been convicted of an offense described by any of the following categories:

(1) An offense involving forgery or fraud.

(2) An offense involving misuse of a computer.

(3) An offense for which the person is required to register as a sex offender pursuant to Section 290.

(4) An offense involving any misuse of the personal or financial information of another person.

(b) Any person who is a prison inmate, and who has access to any personal information, shall disclose that he or she is a prison inmate before taking any personal information from anyone.

(c) This section shall not apply to inmates in employment programs or public service facilities where incidental contact with personal information may occur.

SEC. 3. Section 219.5 is added to the Welfare and Institutions Code, to read:

219.5. (a) No ward of the juvenile court or Department of the Youth Authority shall perform any function that provides access to personal information including, but not limited to, social security numbers, addresses, driver's license numbers, or telephone numbers of private individuals if that person has been adjudicated to have committed an offense described by any of the following categories:

(1) An offense involving forgery or fraud.

(2) An offense involving misuse of a computer.

(3) An offense for which the person is required to register as a sex offender pursuant to Section 290 of the Penal Code.

(4) An offense involving any misuse of the personal or financial information of another person.

(b) If asked, any person who is a ward of the juvenile court or the Department of the Youth Authority, and who has access to any personal information, shall disclose that he or she is a ward of the juvenile court or the Department of the Youth Authority before taking any personal information from anyone.

(c) Any program involving the taking of personal information over the telephone by a person who is a ward of the juvenile court or the Department of the Youth Authority, shall be subject to random monitoring of those telephone calls.

(d) Any program involving the taking of personal information by a person who is a ward of the juvenile court or the Department of the Youth Authority shall provide supervision at all times of the wards' activities.

(e) This section shall not apply to wards in employment programs or public service facilities where incidental contact with personal information may occur.

CHAPTER 552

An act to add Section 65850.4 to the Government Code, relating to land use.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. Section 65850.4 is added to the Government Code, to read:

65850.4. (a) It is the intent of the Legislature to authorize the legislative body of any city or county to enter into a legally sanctioned and appropriate cooperative agreement, consortium, or joint powers authority with other adjacent cities or counties regarding regulation of established negative secondary effects of adult or sexually oriented businesses if the actions taken by the legislative body are consistent with subdivision (g) of Section 65850.

(b) The Legislature finds and declares that in order to encourage the legislative body of a city or county in regulating adult or sexually oriented businesses or similar businesses under subdivision (g) of Section 65850, the legislative body may consider any harmful secondary effects such a business may have on adjacent cities and counties and its proximity to churches, schools, residents, and other businesses located in adjacent cities or counties.

CHAPTER 553

An act to amend Sections 3717, 3719, and 3750 of, and to add Sections 3758, 3758.5, 3758.6, and 3759 to, the Business and Professions Code, relating to respiratory care practitioners, and making an appropriation therefor.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. Section 3717 of the Business and Professions Code is amended to read:

3717. The board, or any licensed respiratory care practitioner, enforcement staff, or investigative unit appointed by the board, may inspect, or require reports from, a general or specialized hospital or any other facility or corporation providing respiratory care, treatment, or services and the respiratory care staff thereof, with respect to the respiratory care, treatment, services, or facilities provided therein, or the employment of staff providing the respiratory care, treatment, or services, and may inspect respiratory care patient records with respect to that care, treatment, services, or facilities. The authority to make inspections and to require reports as provided by this section is subject to the restrictions against disclosure contained in Section 2225. Those persons may also inspect employment records relevant to an official investigation provided

the written request to inspect the records specifies the portion of the records to be inspected.

SEC. 2. Section 3719 of the Business and Professions Code is amended to read:

3719. Each person renewing his or her license shall submit proof satisfactory to the board that, during the preceding two-year period, he or she completed the required number of continuing education hours established by regulation of the board. Required continuing education shall not exceed 30 hours every two years.

Successful completion of an examination approved by the board may be submitted by a licensee for a designated portion of continuing education credit. The board shall determine the hours of credit to be granted for the passage of particular examinations.

SEC. 3. 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.

(o) Incompetence in his or her practice as a respiratory care practitioner.

(p) A pattern of substandard care.

SEC. 4. Section 3758 is added to the Business and Professions Code, to read:

3758. (a) Any employer of a respiratory care practitioner shall report to the Respiratory Care Board the suspension or termination for cause of any practitioner in their employ. The reporting required herein shall not act as a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800, and shall not be subject to discovery in civil cases.

(b) For purposes of the section, "suspension of termination for cause" is defined to mean suspension or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to such an extent that it impairs the ability to safely practice respiratory care.

(2) Unlawful sale of controlled substances or other prescription items.

(3) Patient neglect, physical harm to a patient, or sexual contact with a patient.

(4) Falsification of medical records.

(5) Gross incompetence or negligence.

(6) Theft from patients, other employees, or the employer.

(c) Failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed ten thousand dollars ($10,000) per violation.

SEC. 5. Section 3758.5 is added to the Business and Professions Code, to read:

3758.5. If a licensee has knowledge that another person may be in violation of, or has violated, any of the statutes or regulations administered by the board, the licensee shall report this information to the board in writing and shall cooperate with the board in furnishing information or assistance as may be required.

SEC. 6. Section 3758.6 is added to the Business and Professions Code, to read:

3758.6. In addition to the reporting required under Section 3758, an employer shall also report to the board the name, professional licensure type and number, and title of the person supervising the licensee who has been suspended or terminated for cause, as defined in subdivision (b) of Section 3758. If the supervisor is a licensee under this chapter, the board shall investigate whether due care was exercised by that supervisor in accordance with this chapter. If the supervisor is a health professional, licensed by another licensing board under this division, the employer shall report the name of that supervisor and any and all information pertaining to the suspension or termination for cause of the person licensed under this chapter to the appropriate licensing board.

SEC. 7. Section 3759 is added to the Business and Professions Code, to read:

3759. Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this chapter.

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.

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CHAPTER 554

An act to amend Sections 3018, 3021, and 18370 of the Elections Code, relating to elections.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. Section 3018 of the Elections Code is amended to read:

3018. (a) Any voter using an absentee ballot may, prior to the close of the polls on election day, vote the ballot at the office of the elections official. The voter shall vote the ballot in the presence of an officer of the elections official or in a voting booth, at the discretion of the elections official, but in no case may his or her vote be observed. Where voting machines are used the elections official may provide one voting machine for each ballot type used within the jurisdiction.

(b) For purposes of this section, the office of an elections official may include satellite locations. Notice of the satellite locations shall be made by the elections official by the issuance of a general news release, issued not later than 14 days prior to voting at the satellite location. The news release shall set forth the following information:

(1) The satellite location or locations.

(2) The dates and hours the satellite location or locations will be open.

(3) A telephone number that voters may use to obtain information regarding absentee ballots and the satellite locations.

(c) Absentee ballots voted at a satellite location pursuant to this section shall be placed in an absentee voter identification envelope to be completed by the voter pursuant to Section 3011.

SEC. 2. Section 3021 of the Elections Code is amended to read:

3021. After the close of the period for requesting absent voter ballots by mail any voter unable to go to the polls because of illness or disability resulting in his or her confinement in a hospital, sanatorium, nursing home, or place of residence, or any voter unable because of a physical handicap to go to his or her polling place or because of that handicap is unable to vote at his or her polling place due to existing architectural barriers at his or her polling place denying him or her physical access to the polling place, voting booth, or voting apparatus or machinery, or any voter unable to go to his or her polling place because of conditions resulting in his or her absence from the precinct on election day may request in a written statement, signed under penalty of perjury that a ballot be delivered to him or her. This written statement shall not be required if the absent voter ballot is voted in the office of the elections official as defined by subdivision (b) of Section 3018, at the time of the request. This ballot

shall be delivered by the elections official to any authorized representative of the voter who presents this written statement to the elections official.

Before delivering the ballot the elections official may compare the signature on the request with the signature on the voter's affidavit of registration, but in any event, the signature shall be compared before the absent voter ballot is canvassed.

The voter shall mark the ballot, place it in the identification envelope, fill out and sign the envelope and return the ballot, personally or through the authorized representative, to either the elections official or any polling place within the jurisdiction.

These ballots shall be processed and counted in the same manner as other absentee ballots.

SEC. 3. Section 18370 of the Elections Code is amended to read:

18370. No person, on election day, or at any time that a voter may be casting a ballot, shall, within 100 feet of a polling place or an elections official's office:

(a) Circulate an initiative, referendum, recall, or nomination petition or any other petition.

(b) Solicit a vote or speak to a voter on the subject of marking his or her ballot.

(c) Place a sign relating to voters' qualifications or speak to a voter on the subject of his or her qualifications except as provided in Section 14240.

(d) Do any electioneering.

As used in this section, "100 feet of a polling place or an elections official's office" means a distance 100 feet from the room or rooms in which voters are signing the roster and casting ballots.

Any person who violates any of the provisions of this section is guilty of a misdemeanor.

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 555

An act to amend Sections 502.01, 13848, 13848.2, 13848.4, and 13848.6 of the Penal Code, relating to computer crimes, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. Section 502.01 of the Penal Code is amended to read:

502.01. (a) As used in this section:

(1) "Property subject to forfeiture" means any property of the defendant that is illegal telecommunications equipment as defined in subdivision (g) of Section 502.8, or a computer, computer system, or computer network, and any software or data residing thereon, if the telecommunications device, computer, computer system, or computer network was used in committing a violation of subdivision (c) of Section 502 or Section 502.7 or 502.8, or was used as a repository for the storage of software or data obtained in violation of those provisions. If the defendant is a minor, it also includes property of the parent or guardian of the defendant.

(2) "Sentencing court" means the court sentencing a person found guilty of violating subdivision (c) of Section 502 or Section 502.7 or 502.8, or, in the case of a minor found to be a person described in Section 602 of the Welfare and Institutions Code because of a violation of those provisions, the juvenile court.

(3) "Interest" means any property interest in the property subject to forfeiture.

(4) "Security interest" means an interest that is a lien, mortgage, security interest, or interest under a conditional sales contract.

(5) "Value" has the following meanings:

(A) When counterfeit items of computer software are manufactured or possessed for sale, the "value" of those items shall be equivalent to the retail price or fair market price of the true items that are counterfeited.

(B) When counterfeited but unassembled components of computer software packages are recovered, including, but not limited to, counterfeited computer diskettes, instruction manuals, or licensing envelopes, the "value" of those components of computer software packages shall be equivalent to the retail price or fair market price of the number of completed computer software packages that could have been made from those components.

(b) The sentencing court shall, upon petition by the prosecuting attorney, at any time following sentencing, or by agreement of all parties, at the time of sentencing, conduct a hearing to determine whether any property or property interest is subject to forfeiture

under this section. At the forfeiture hearing, the prosecuting attorney shall have the burden of establishing, by a preponderance of the evidence, that the property or property interests are subject to forfeiture. The prosecuting attorney may retain seized property that may be subject to forfeiture until the sentencing hearing.

(c) Prior to the commencement of a forfeiture proceeding, the law enforcement agency seizing the property subject to forfeiture shall make an investigation as to any person other than the defendant who may have an interest in it. At least 30 days before the hearing to determine whether the property should be forfeited, the prosecuting agency shall send notice of the hearing to any person who may have an interest in the property that arose before the seizure.

A person claiming an interest in the property shall file a motion for the redemption of that interest at least 10 days before the hearing on forfeiture, and shall send a copy of the motion to the prosecuting agency and to the probation department.

If a motion to redeem an interest has been filed, the sentencing court shall hold a hearing to identify all persons who possess valid interests in the property. No person shall hold a valid interest in the property if, by a preponderance of the evidence, the prosecuting agency shows that the person knew or should have known that the property was being used in violation of subdivision (c) of Section 502 or Section 502.7 or 502.8, and that the person did not take reasonable steps to prevent that use, or if the interest is a security interest, the person knew or should have known at the time that the security interest was created that the property would be used for a violation.

(d) If the sentencing court finds that a person holds a valid interest in the property, the following provisions shall apply:

(1) The court shall determine the value of the property.

(2) The court shall determine the value of each valid interest in the property.

(3) If the value of the property is greater than the value of the interest, the holder of the interest shall be entitled to ownership of the property upon paying the court the difference between the value of the property and the value of the valid interest.

If the holder of the interest declines to pay the amount determined under paragraph (2), the court may order the property sold and designate the prosecutor or any other agency to sell the property. The designated agency shall be entitled to seize the property and the holder of the interest shall forward any documentation underlying the interest, including any ownership certificates for that property, to the designated agency. The designated agency shall sell the property and pay the owner of the interest the proceeds, up to the value of that interest.

(4) If the value of the property is less than the value of the interest, the designated agency shall sell the property and pay the owner of the interest the proceeds, up to the value of that interest.

(e) If the defendant was a minor at the time of the offense, this subdivision shall apply to property subject to forfeiture that is the property of the parent or guardian of the minor.

(1) The prosecuting agency shall notify the parent or guardian of the forfeiture hearing at least 30 days before the date set for the hearing.

(2) The computer or telecommunications device shall not be subject to forfeiture if the parent or guardian files a signed statement with the court at least 10 days before the date set for the hearing that the minor shall not have access to any computer or telecommunications device owned by the parent or guardian for two years after the date on which the minor is sentenced.

(3) If the minor is convicted of a violation of subdivision (c) of Section 502 or Section 502.7 or 502.8 within two years after the date on which the minor is sentenced, and the violation involves a computer or telecommunications device owned by the parent or guardian, the original property subject to forfeiture, and the property involved in the new offense, shall be subject to forfeiture notwithstanding paragraph (2).

(f) If the defendant is found to have the only valid interest in the property subject to forfeiture, it shall be distributed as follows:

(1) First, to the victim, if the victim elects to take the property as full or partial restitution for injury, victim expenditures, or compensatory damages, as defined in paragraph (1) of subdivision (e) of Section 502. If the victim elects to receive the property under this paragraph, the value of the property shall be determined by the court and that amount shall be credited against the restitution owed by the defendant. The victim shall not be penalized for electing not to accept the forfeited property in lieu of full or partial restitution.

(2) Second, at the discretion of the court, to one or more of the following agencies or entities:

(A) The prosecuting agency.

(B) The public entity of which the prosecuting agency is a part.

(C) The public entity whose officers or employees conducted the investigation resulting in forfeiture.

(D) Other state and local public entities, including school districts.

(E) Nonprofit charitable organizations.

(g) If the property is to be sold, the court may designate the prosecuting agency or any other agency to sell the property at auction. The proceeds of the sale shall be distributed by the court as follows:

(1) To the bona fide or innocent purchaser or encumbrancer, conditional sales vendor, or mortgagee of the property up to the amount of his or her interest in the property, if the court orders a distribution to that person.

(2) The balance, if any, to be retained by the court, subject to the provisions for distribution under subdivision (f).

SEC. 2. Section 13848 of the Penal Code is amended to read:

13848. (a) It is the intent of the Legislature in enacting this chapter to provide local law enforcement and district attorneys with the tools necessary to successfully interdict the promulgation of high technology crime. According to the federal Law Enforcement Training Center, it is expected that states will see a tremendous growth in high technology crimes over the next few years as computers become more available and computer users more skilled in utilizing technology to commit these faceless crimes. High technology crimes are those crimes in which technology is used as an instrument in committing, or assisting in the commission of, a crime, or which is the target of a criminal act.

(b) Funds provided under this program are intended to ensure that law enforcement is equipped with the necessary personnel and equipment to successfully combat high technology crime which includes, but is not limited to, the following offenses:

(1) White-collar crime, such as check, automated teller machine, and credit card fraud, committed by means of electronic or computer-related media.

(2) Unlawful access, destruction of or unauthorized entry into and use of private, corporate, or government computers and networks, including wireless and wireline communications networks and law enforcement dispatch systems, and the theft, interception, manipulation, destruction, or unauthorized disclosure of data stored within those computers and networks.

(3) Money laundering accomplished with the aid of computer networks or electronic banking transfers.

(4) Theft and resale of telephone calling codes, theft of telecommunications service, theft of wireless communication service, and theft of cable television services by manipulation of the equipment used to receive those services.

(5) Software piracy and other unlawful duplication of information.

(6) Theft and resale of computer components and other high technology products produced by the high technology industry.

(7) Remarking and counterfeiting of computer hardware and software.

(8) Theft of trade secrets.

(c) This program is also intended to provide support to law enforcement agencies by providing technical assistance to those agencies with respect to the seizure and analysis of computer systems used to commit high technology crimes or store evidence relating to those crimes.

SEC. 3. Section 13848.2 of the Penal Code is amended to read:

13848.2. (a) There is hereby established in the Office of Criminal Justice Planning a program of financial and technical assistance for law enforcement and district attorneys' offices, designated the High Technology Theft Apprehension and Prosecution Program. All funds appropriated to the Office of Criminal Justice Planning for the

purposes of this chapter shall be administered and disbursed by the executive director of the office in consultation with the High Technology Crime Advisory Committee as established in Section 13848.6 and shall to the extent feasible be coordinated with federal funds and private grants or private donations that are made available for these purposes.

(b) The Executive Director of the Office of Criminal Justice Planning is authorized to allocate and award funds to regional high technology crime programs which are established in compliance with Section 13848.4.

(c) The allocation and award of funds under this chapter shall be made on application executed by the district attorney, county sheriff, or chief of police and approved by the board of supervisors for each county that is a participant of a high technology theft apprehension and prosecution unit.

(d) In identifying program areas that will be eligible for competitive application during the 1998–99 fiscal year for federal funding pursuant to the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs (Subchapter V (commencing with Section 3750) of Chapter 46 of the United States Code), the Office of Criminal Justice Planning shall include, to the extent possible, an emphasis on high technology crime by selecting funding areas that would further the use of federal funds to address high technology crime and facilitate the establishment of high technology multijurisdictional task forces.

(e) The Office of Criminal Justice Planning shall allocate any increase in federal funding pursuant to the Anti-Drug Abuse Act (Public Law 100-690) for the 1998–99 fiscal year to those programs described in subdivision (d).

SEC. 4. Section 13848.4 of the Penal Code is amended to read:

13848.4. (a) All funds appropriated to the Office of Criminal Justice Planning for the purposes of this chapter shall be deposited in the High Technology Theft Apprehension and Prosecution Program Trust Fund, which is hereby established. The fund shall be under the direction and control of the executive director. Moneys in the fund, upon appropriation by the Legislature, shall be expended to implement this chapter.

(b) Moneys in the High Technology Theft Apprehension and Prosecution Program Trust Fund shall be expended to fund programs to enhance the capacity of local law enforcement and prosecutors to deter, investigate, and prosecute high technology-related crimes. After deduction of the actual and necessary administrative costs referred to in subdivision (f), the High Technology Theft Apprehension and Prosecution Program Trust Fund shall be expended to fund programs to enhance the capacity of local law enforcement, state police, and local prosecutors to deter, investigate, and prosecute high technology-related crimes. Any funds distributed under this chapter shall be expended for the

exclusive purpose of deterring, investigating, and prosecuting high technology-related crimes.

(c) Up to 10 percent of the funds shall be used for developing and maintaining a statewide data base on high technology crime for use in developing and distributing intelligence information to participating law enforcement agencies. Any funds not expended in a fiscal year for these purposes shall be distributed to regional high technology theft task forces pursuant to subdivision (b).

(d) Any regional task force receiving funds under this section may elect to have the Department of Justice administer the regional task force program. The department may be reimbursed for any expenditures incurred for administering a regional task force from funds given to local law enforcement pursuant to subdivision (b).

(e) The Office of Criminal Justice Planning shall distribute funds in the High Technology Theft Apprehension and Prosecution Program Trust Fund to eligible agencies pursuant to subdivision (b) in consultation with the High Technology Crime Advisory Committee established pursuant to Section 13848.6.

(f) Administration of the overall program and the evaluation and monitoring of all grants made pursuant to this chapter shall be performed by the Office of Criminal Justice Planning, provided that funds expended for these functions shall not exceed 5 percent of the total amount made available under this chapter.

SEC. 5. Section 13848.6 of the Penal Code is amended to read:

13848.6. (a) The High Technology Crime Advisory Committee is hereby established for the purpose of formulating a comprehensive written strategy for addressing high technology crime throughout the state and to advise the Office of Criminal Justice Planning on the appropriate disbursement of funds to regional task forces.

(b) This strategy shall be designed to be implemented through regional task forces. In formulating that strategy, the committee shall identify various priorities for law enforcement attention, including the following goals:

(1) To apprehend and prosecute criminal organizations, networks, and groups of individuals engaged in the following activities:

(A) Theft of computer components and other high technology products.

(B) Violations of Penal Code Sections 211, 350, 351a, 459, 496, 537e, 593d, and 593e.

(C) Theft of telecommunications services and other violations of Penal Code Sections 502.7 and 502.8.

(D) Counterfeiting of negotiable instruments and other valuable items through the use of computer technology.

(E) Creation and distribution of counterfeit software and other digital information, including the use of counterfeit trademarks to misrepresent the origin of that software or digital information.

(2) To apprehend and prosecute individuals and groups engaged in the unlawful access, destruction, or unauthorized entry into and use of private, corporate, or government computers and networks, including wireless and wireline communications networks and law enforcement dispatch systems, and the theft, interception, manipulation, destruction, and unauthorized disclosure of data stored within those computers.

(3) To apprehend and prosecute individuals and groups engaged in the theft of trade secrets.

(4) To investigate and prosecute high technology crime cases requiring coordination and cooperation between regional task forces and local, state, federal, and international law enforcement agencies.

(c) The Executive Director of the Office of Criminal Justice Planning shall appoint the following members to the committee:

(1) A designee of the California District Attorneys Association.

(2) A designee of the California State Sheriffs Association.

(3) A designee of the California Police Chiefs Association.

(4) A designee of the Attorney General.

(5) A designee of the California Highway Patrol.

(6) A designee of the High Tech Criminal Investigators Association.

(7) A designee of the Office of Criminal Justice Planning.

(8) A designee of the American Electronic Association to represent California computer system manufacturers.

(9) A designee of the American Electronic Association to represent California computer software producers.

(10) A designee of the California Cellular Carriers Association.

(11) A designee of the California Internet Industry Alliance.

(12) A designee of the Semiconductor Equipment and Materials International.

(13) A designee of the California Cable Television Association.

(14) A designee of the Motion Picture Association of America.

(15) A designee of either the California Telephone Association or the California Association of Long Distance Companies. This position shall rotate every other year between designees of the two associations.

(d) The Executive Director of the Office of Criminal Justice Planning shall designate the Chair of the High Technology Crime Advisory Committee from the appointed members.

(e) The advisory committee shall not be required to meet more than 12 times per year. The advisory committee may create subcommittees of its own membership, and each subcommittee shall meet as often as the subcommittee members find necessary. It is the intent of the Legislature that all advisory committee members shall actively participate in all advisory committee deliberations required by this chapter.

Any member who, without advance notice to the executive director and without designating an alternative representative,

misses three scheduled meetings in any calendar year for any reason other than severe temporary illness or injury (as determined by the Executive Director of the Office of Criminal Justice Planning) shall automatically be removed from the advisory committee. If a member wishes to send an alternative representative in his or her place, advance written notification of this substitution shall be presented to the executive director. This notification shall be required for each meeting the appointed member elects not to attend.

Members of the advisory committee shall receive no compensation for their services, but shall be reimbursed for travel and per diem expenses incurred as a result of attending meetings sponsored by the Office of Criminal Justice Planning under this chapter.

(f) The executive director, in consultation with the High Technology Crime Advisory Committee, shall develop specific guidelines and administrative procedures for the selection of projects to be funded by the High Technology Theft Apprehension and Prosecution Program, which guidelines shall include the following selection criteria:

(1) Each regional task force that seeks funds shall submit a written application to the committee setting forth in detail the proposed use of the funds.

(2) In order to qualify for the receipt of funds, each proposed regional task force submitting an application shall provide written evidence that the agency meets either of the following conditions:

(A) The regional task force devoted to the investigation and prosecution of high technology-related crimes is comprised of local law enforcement and prosecutors, and has been in existence for at least one year prior to the application date.

(B) At least one member of the task force has at least three years of experience in investigating or prosecuting cases of suspected high technology crime.

(3) In order to qualify for funds, a regional task force shall be comprised of local law enforcement and prosecutors from at least two counties. At the time of funding, the proposed task force shall also have at least one investigator assigned to it from a state law enforcement agency. Each task force shall be directed by a local steering committee composed of representatives of participating agencies and members of the local high technology industry.

(4) Additional criteria that shall be considered by the advisory committee in awarding grant funds shall include, but not be limited to, the following:

(A) The number of high technology crime cases filed in the prior year.

(B) The number of high technology crime cases investigated in the prior year.

(C) The number of victims involved in the cases filed.

(D) The total aggregate monetary loss suffered by the victims, including individuals, associations, institutions, or corporations, as a

result of the high technology crime cases filed, and those under active investigation by that task force.

(5) Each regional task force that has been awarded funds authorized under the High Technology Theft Apprehension and Prosecution Program during the previous grant-funding cycle, upon reapplication for funds to the committee in each successive year, shall be required to submit a detailed accounting of funds received and expended in the prior year in addition to any information required by this section. The accounting shall include all of the following information:

(A) The amount of funds received and expended.

(B) The use to which those funds were put, including payment of salaries and expenses, purchase of equipment and supplies, and other expenditures by type.

(C) The number of filed complaints, investigations, arrests, and convictions that resulted from the expenditure of the funds.

(g) The committee shall annually review the effectiveness of the regional task forces created in deterring, investigating, and prosecuting high technology crimes and provide its findings in a report to the Legislature and the Governor. This report shall be based on information provided by the regional task forces in an annual report to the committee which shall detail the following:

(1) Facts based upon, but not limited to, the following:

(A) The number of high technology crime cases filed in the prior year.

(B) The number of high technology crime cases investigated in the prior year.

(C) The number of victims involved in the cases filed.

(D) The number of convictions obtained in the prior year.

(E) The total aggregate monetary loss suffered by the victims, including individuals, associations, institutions, corporations, and other relevant public entities, according to the number of cases filed, investigations, prosecutions, and convictions obtained.

(2) An accounting of funds received and expended in the prior year, which shall include all of the following:

(A) The amount of funds received and expended.

(B) The uses to which those funds were put, including payment of salaries and expenses, purchase of supplies, and other expenditures of funds.

(C) Any other relevant information requested.

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 revise provisions relating to the High Technology Crime Advisory Committee and the funding of regional law enforcement high-tech task forces, so as to assist in the prevention, investigation, and prosecution of high technology crimes at the

earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 556

An act to add Section 12921.15 to the Insurance Code, relating to the Insurance Commissioner.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. Section 12921.15 is added to the Insurance Code, to read:

12921.15. On or before July 1, 1999, the commissioner shall prepare a written report, to be made available by the department to interested individuals upon written request, that details complaint and enforcement information on individual insurers in accordance with guidelines established under paragraph (5) of subdivision (a) of Section 12921.1. The report shall be made available by mail through the department's consumer toll-free telephone number and through the department's Internet website and transmitted via electronic mail if the individual has the ability to obtain the report in this manner. No complaint information shall be included in the report required by this section that has not been provided to the insurer in accordance with subdivision (c) of Section 12921.1.

CHAPTER 557

An act to amend Section 13961.1 of the Government Code, relating to victims of crime, and making an appropriation therefor.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. Section 13961.1 of the Government Code is amended to read:

13961.1. (a) An emergency award shall be available for a victim or derivative victim if any of the following occur as a result of the crime:

(1) The victim incurs loss of income or the derivative victim incurs loss of support.

(2) The victim requires emergency medical treatment.

(3) The victim dies as a result of the crime and any individual, without anticipation of personal gain, incurs the funeral and burial expense.

(b) Emergency award application forms shall be provided by the board upon request of the applicant. The board shall make available the application forms through all means at its disposal.

(c) The board may grant an emergency award based solely on the application of the victim or derivative victim. Disbursements of funds for emergency awards shall be made within 30 business days of application. The board may refuse to grant an emergency award where it has reason to believe that the applicant will not qualify for an award for assistance under this article. The board may delegate authority to designated staff persons, who will use guidelines established by the board, to grant emergency awards. By mutual agreement between the staff of the board and the applicant or the applicant's representative, the staff of the board or the applicant's representative may take additional 10-day periods to verify the emergency award claim and make payment.

(d) An applicant for an emergency award is not entitled to a hearing before the board to contest a denial of an emergency award. However, the applicant may submit an application for a regular award and is entitled to a hearing pursuant to Section 13963 if that application is recommended for denial.

(e) The application for an emergency award shall notify the applicant that he or she must complete the regular application within one year of the date of the crime or certify that he or she does not anticipate claiming reimbursements in addition to those claimed in the application for an emergency award.

(f) If the applicant certifies that no expenses will be claimed beyond those claimed in the emergency award, the board shall subsequently verify the emergency award application upon receipt of the crime report or any other information the board may require. The other information shall include statements signed by the applicant authorizing the release of information to the board necessary for the verification of the claimed losses, and authorizing a lien in favor of the board against any recovery by the applicant by judgment, settlement, or otherwise as a result of any injury to the victim.

(g) If upon final disposition of the regular application or verification of the emergency award, it is found that the applicant is not eligible for assistance from the board, the applicant shall reimburse the board for the emergency award pursuant to an agreed upon repayment schedule. If upon a final disposition of the application, the board grants assistance to the applicant, the amount of the emergency award shall be deducted from the final award of compensation granted; and, if the amount of the grant is less than the amount of the emergency award, the excess amount shall be repaid

according to an agreed upon repayment schedule. Final disposition for the purposes of this section shall mean the final decision of the board with respect to the victim's or derivative victim's application for assistance, before any appellate action is instituted. If an application for an emergency award is denied, the board shall notify the applicant in writing of the reasons for the denial.

(h) The amount of the emergency award shall be dependent upon the immediate needs of the victim or derivative victim, as evidenced by the victim's loss of income or the derivative victim's loss of support, the funeral and burial expenses incurred on behalf of the victim, and other losses incurred as a direct result of the crime before filing or reasonably anticipated during the first 90 days after the initial filing of an application. Except for applications filed pursuant to paragraph (3) of subdivision (a), in no event shall the amount of the emergency award exceed two thousand dollars ($2,000). Where an application has been filed pursuant to paragraph (3) of subdivision (a), the amount of the emergency award shall not exceed five thousand dollars ($5,000).

(i) The emergency award application shall require only the following:

(1) The name, address, and telephone number of the victim or derivative victim on whose behalf the application is made.

(2) A brief description of the nature and circumstances of the crime, including the date and location.

(3) The date the crime was reported to a law enforcement agency and the name and address of the agency.

(4) The name, address, and telephone number of the employer or self-employing entity, the loss of income or support to date and estimate of future loss.

(5) The nature of the injury and the name, address, and telephone number of medical providers and the cost of medical care incurred to date.

(6) The name, address, and telephone number of the funeral and burial providers and the cost of funeral and burial expenses incurred to date.

(7) A statement that in the event the applicant is later found ineligible for assistance under this article or the final award is less than the emergency award, the applicant will be required to repay the excess amount.

(8) The applicant's signature and a statement that the information is supplied under penalty of perjury, violation of which is punishable by six months in the county jail.

(j) Where an application has been filed pursuant to paragraph (3) of subdivision (a), the application for the emergency award shall additionally contain the following:

(1) A statement that in the event the applicant receives reimbursement from another source, including, but not limited to, court-ordered restitution or life insurance, either in whole or in part

for the funeral and burial expenses incurred on behalf of the victim, that the applicant will be required to repay the board.

(2) A complete copy of the report regarding the incident and any supplemental reports involving the crime, public offense, or incident giving rise to the claim, as prepared by a law enforcement agency pursuant to subdivision (d) of Section 13968. This report may, at the discretion of the law enforcement agency and as provided in subdivision (e) of Section 13968, exclude the names of witnesses or informants, if the release of this information would be detrimental to the parties or to an investigation currently in progress.

CHAPTER 558

An act to amend Section 404.6 of the Penal Code, relating to crimes.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. Section 404.6 of the Penal Code is amended to read:

404.6. (a) Every person who with the intent to cause a riot does an act or engages in conduct that urges a riot, or urges others to commit acts of force or violence, or the burning or destroying of property, and at a time and place and under circumstances that produce a clear and present and immediate danger of acts of force or violence or the burning or destroying of property, is guilty of incitement to riot.

(b) Incitement to riot is punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(c) Every person who incites any riot in the state prison or a county jail that results in serious bodily injury, shall be punished by either imprisonment in a county jail for not more than one year, or imprisonment in the state prison.

(d) The existence of any fact that would bring a person under subdivision (c) shall be alleged in the complaint, information, or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt, by the court where guilt is established by a plea of guilty or nolo contendere, or by trial by the court sitting without a jury.

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 559

An act to add Section 823 to the Government Code, relating to governmental tort liability.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. This act shall be known and may be cited as the "Charles Lazzaretto Peace Officer Widows and Widowers Protection Act."

SEC. 2. Section 823 is added to the Government Code, to read:

823. Neither the widow, widower, nor the heirs of a peace officer, as defined in Sections 830.1, 830.2, and 830.32 of the Penal Code, shall be liable individually for any injury or death that may result from an act or omission of a peace officer that occurs in his or her line of duty, including an act or omission not directly related to the officer's death, if the officer was slain while in the line of duty. Nothing in this section shall preclude any action from being brought against the estate of the peace officer.

CHAPTER 560

An act to amend Section 35400 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. Section 35400 of the Vehicle Code is amended to read:

35400. (a) No vehicle shall exceed a length of 40 feet.

(b) This section does not apply to any of the following:

(1) A vehicle used in a combination of vehicles when the excess length is caused by auxiliary parts, equipment, or machinery not used as space to carry any part of the load, except that the combination of vehicles shall not exceed the length provided for combination vehicles.

(2) A vehicle when the excess length is caused by any parts necessary to comply with the fender and mudguard regulations of this code.

(3) (A) An articulated bus or articulated trolley coach that does not exceed a length of 60 feet.

(B) An articulated bus or articulated trolley coach described in subparagraph (A) may be equipped with a folding device attached to the front of the bus or trolley if the device is designed and used exclusively for transporting bicycles. The device, including any bicycles transported thereon, shall be mounted in a manner that does not materially affect efficiency or visibility of vehicle safety equipment, and shall not extend more than 30 inches from the front of the bus or trolley coach when fully deployed. The handlebars of a bicycle that is transported on a device described in this subparagraph shall not extend more than 42 inches from the front of the bus.

(4) A semitrailer while being towed by a motortruck or truck tractor, if the distance from the kingpin to the rearmost axle of the semitrailer does not exceed 40 feet for semitrailers having two or more axles, or 38 feet for semitrailers having one axle if the semitrailer does not, exclusive of attachments, extend forward of the rear of the cab of the motortruck or truck tractor.

(5) A bus when the excess length is caused by the projection of a front safety bumper or a rear safety bumper, or both. The safety bumper shall not cause the length of the vehicle to exceed the maximum legal limit by more than one foot in the front and one foot in the rear. For the purposes of this chapter, "safety bumper" means any device which is fitted on an existing bumper or which replaces the bumper and is constructed, treated, or manufactured to absorb energy upon impact.

(6) A bus when the excess length is caused by a device, located in front of the front axle, for lifting wheelchairs into the bus. That device shall not cause the length of the bus to be extended by more than 18 inches, inclusive of any front safety bumper.

(7) A bus when the excess length is caused by a device attached to the rear of the bus designed and used exclusively for the transporting of bicycles. This device may be up to 10 feet in length, if the device, along with any other device permitted pursuant to this section, does not cause the total length of the bus, including any device or load, to exceed 50 feet.

(8) A bus operated by a public agency or a passenger stage corporation, as defined in Section 226 of the Public Utilities Code, used in transit system service, other than a schoolbus, when the excess length is caused by a folding device attached to the front of the

bus which is designed and used exclusively for transporting bicycles. The device, including any bicycles transported thereon, shall be mounted in a manner that does not materially affect efficiency or visibility of vehicle safety equipment, and shall not extend more than 36 inches from the front of the bus when fully deployed. The handlebars of a bicycle that is transported on a device described in this paragraph shall not extend more than 42 inches from the front of the bus. A device described in this paragraph may not be used on any bus which, exclusive of the device, exceeds 40 feet in length or on any bus having a device attached to the rear of the bus pursuant to paragraph (7).

(9) A bus of a length of up to 45 feet when operating on those highways specified in subdivision (a) of Section 35401.5. The Department of Transportation or local authorities, with respect to highways under their respective jurisdictions, shall not deny reasonable access to a bus of a length of up to 45 feet between the highways specified in subdivision (a) of Section 35401.5 and points of loading and unloading for motor carriers of passengers as required by the federal Intermodal Surface Transportation Efficiency Act of 1991 (P.L. 102-240).

As used in this paragraph, "reasonable access" means access substantially similar to that authorized for combinations of vehicles pursuant to subdivision (c) of Section 35401.5 and access authorized through a process substantially similar to that authorized for combinations of vehicles pursuant to subdivision (d) of Section 35401.5.

(c) The Legislature, by increasing the maximum permissible kingpin to rearmost axle distance to 40 feet effective January 1, 1987, as provided in paragraph (4) of subdivision (b), does not intend this action to be considered a precedent for any future increases in truck size and length limitations.

(d) Any transit bus equipped with a folding device installed on or after January 1, 1999, that is permitted under subparagraph (B) of paragraph (3) of subdivision (b) or under paragraph (8) of subdivision (b) shall be additionally equipped with any of the following:

(1) An indicator light that is visible to the driver and is activated whenever the folding device is in an extended position.

(2) Any other device or mechanism that provides notice to the driver that the folding device is in an extended position.

(3) A mechanism that causes the folding device to retract automatically from an extended position.

(e) (1) No person shall improperly or unsafely mount a bicycle on a device described in subparagraph (B) of paragraph (3) of subdivision (b), or in paragraph (8) of subdivision (b).

(2) Notwithstanding subdivision (a) of Section 23114 or subdivision (a) of Section 24002 or any other provision of law, when a bicycle is improperly or unsafely loaded by a passenger onto a

transit bus, the passenger, and not the driver, is liable for any violation of this code that is attributable to the improper or unlawful loading of the bicycle.

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 561

An act relating to state property.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) The City of Pacifica, in conjunction with the Army Corps of Engineers, is in the process of designing the flood control project to protect the Lower Linda Mar area in the City of Pacifica. This area flooded in 1955, 1962, 1972, 1974, 1984, and 1997, and nearly 300 houses have been submerged in over three feet of water. The project's environmental impact report has been completed and construction is scheduled to begin as early as 1998. The project includes the restoration of a floodplain and stream habitat. The project has received nationwide recognition from environmental groups as a method of providing flood control and environmental enhancement. The flood control project and wetlands restoration are consistent with all current highway planning.

(b) The widening of the flood channel and the wetlands restoration will occur on property owned by the Department of Transportation. That property was acquired by the department in the 1970's without the use of federal highway funds and was acquired for the highway alignment plans in the 1960's. This state-owned right-of-way is no longer being considered in any future highway plans.

(c) The department has identified this property as surplus and has appraised its value at approximately five hundred thousand dollars ($500,000). The property is located in the Lower Linda Mar area in the City of Pacifica in the vicinity of the junction of State Highway Route 1 and San Pedro Avenue. The flood control project will prevent this section of State Highway Route 1 from flooding, and thereby allowing this section of the highway to maintain an important corridor for access to the whole central San Mateo coast. This project may provide a significant benefit to the Department of Transportation during flooding events.

SEC. 2. (a) The Department of Transportation shall transfer, at no cost, to the City of Pacifica the state-owned real property described in subdivision (c).

(b) The property that is transferred to the City of Pacifica pursuant to this section may only be used by the city for construction of the flood control project described in Section 1 of this act and only if the department determines that the value of the benefits to State Highway Route 1 provided by the flood control project exceeds the value of the property and the state does not intend to use the property for highway purposes. If, for any reason, the property is not used for the flood control project or if the project adversely affects any future plans for highway improvements the property shall revert to the state. The transfer shall include provisions for appropriate department easements and encroachments.

(c) The property to be transferred pursuant to subdivision (a) consists of two separate parcels of property located in the Lower Linda Mar area of the City of Pacifica, County of San Mateo, and are identified by the Oakland District 4 Office of the Department of Transportation as follows:

(1) Parcel one, as being State Parcel 27256 located on the northwest side of State Highway Route 1 at Linda Mar Boulevard on Appraisal Map 570.5; State Parcel 44069 located on the northwest side of State Highway Route 1 and adjacent to Parcel 27256 on Appraisal Maps A570.2 and A570.5.

(2) Parcel two, as being State Parcel 41911 located on the southeast side of State Highway Route 1 at San Pedro Creek on Appraisal Maps A570.1 and A570.2; State Parcel 28755 directly adjacent to State Parcel 41911 located on Appraisal Map A570.1; State Parcel 39868 (40036) located directly adjacent to Parcel 28755 on Appraisal Map A570.1 and State Parcel 39868-1 (40036-1) located on Right-of-Way Record Map 189.13.

CHAPTER 562

An act to amend Section 203 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. Section 203 of the Revenue and Taxation Code is amended to read:

203. (a) The college exemption is as specified in subdivision (e) of Section 3 and Section 5 of Article XIII of the California Constitution.

(b) An educational institution of collegiate grade is an institution incorporated as a college or seminary of learning that requires for regular admission the completion of a four-year high school course or its equivalent, and confers upon its graduates at least one academic or professional degree, based on a course of at least one year in flight test technology or flight test science, for which the master's degree program has been approved by the California Council for Private Postsecondary and Vocational Education or the Bureau for Private Postsecondary and Vocational Education, on a course of at least two years in liberal arts and sciences, or on a course of at least three years in professional studies, such as law, theology, education, medicine, dentistry, engineering, veterinary medicine, pharmacy, architecture, fine arts, commerce, or journalism.

(c) An educational institution of collegiate grade is not conducted for profit when it is conducted exclusively for scientific or educational purposes and no part of its net income inures to the benefit of any private person.

(d) Without prejudice to the right to assert an exemption otherwise available under subdivision (a), (d), or (e) of Section 3 of Article XIII of the Constitution, a property tax under this division shall be imposed upon that portion of the bookstore property determined to be generating the unrelated business taxable income, as defined in Section 512 of the Internal Revenue Code, to the extent property is both of the following:

(1) Owned by an educational institution of collegiate grade or used by a nonprofit corporation operating a student bookstore affiliated with an educational institution of collegiate grade.

(2) Primarily devoted to bookstore use that produces income that is taxable as unrelated business taxable income.

This tax shall be determined by establishing a ratio of the unrelated business taxable income to the bookstore's gross income as defined by the Internal Revenue Code. That percent shall be the maximum percentage of the bookstore property on which a property tax can be levied.

At the end of a fiscal year when unrelated business income has been generated, the nonprofit organization shall file with the assessor copies of the organization's most recent tax return filed with the Internal Revenue Service.

SEC. 2. Notwithstanding Section 2229 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any property tax revenues lost by it pursuant to 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.

CHAPTER 563

An act to amend, repeal, and add Section 10783 of the Revenue and Taxation Code, and to amend, repeal, and add Sections 5101.5 and 9105 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. Section 10783 of the Revenue and Taxation Code is amended to read:

10783. (a) The license fee imposed by this part does not apply to a passenger vehicle, a motorcycle, or a commercial vehicle of less than 6,001 pounds unladen weight, unless the vehicle is used for transportation for hire, compensation, or profit, if the vehicle is owned by any disabled veteran, as described in Section 22511.9 of the Vehicle Code, or any veteran who is a Congressional Medal of Honor recipient.

(b) The exemption granted by this section shall extend to not more than one vehicle owned by the veteran. The Department of Motor Vehicles may require any disabled veteran applying for an exemption under this section to submit a certificate signed by a physician or surgeon substantiating the disability. The Department of Motor Vehicles may require any person applying for an exemption under this section by reason of receiving the Congressional Medal of Honor to submit satisfactory proof that he or she is a Congressional Medal of Honor recipient.

(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. 2. Section 10783 is added to the Revenue and Taxation Code, to read:

10783. (a) The license fee imposed by this part does not apply to a passenger vehicle, a motorcycle, or a commercial vehicle of less than 8,001 pounds unladen weight, unless the vehicle is used for transportation for hire, compensation, or profit, if the vehicle is owned by any disabled veteran, as defined in Section 295.7 of the

Vehicle Code, any former American prisoner of war, or any veteran who is a Congressional Medal of Honor recipient.

(b) The exemption granted by subdivision (a) shall extend to not more than one vehicle owned by the veteran, or former American prisoner of war, and is applicable to the same vehicle as described in subdivision (b) of Section 9105 of the Vehicle Code.

(c) (1) The Department of Motor Vehicles may require any disabled veteran applying for an exemption under this section to submit a certificate signed by a physician or surgeon substantiating the disability.

(2) The Department of Motor Vehicles may require any person applying for an exemption under this section for either of the following reasons to do any of the following:

(A) By reason of the person's status as a former American prisoner of war, to show, by satisfactory proof, his or her former prisoner-of-war status.

(B) By reason of the person's status of receiving the Congressional Medal of Honor, to show, by satisfactory proof, that he or she is a Congressional Medal of Honor recipient.

(d) This section shall become operative on July 1, 1999.

SEC. 3. Section 5101.5 of the Vehicle Code is amended to read:

5101.5. (a) Any person otherwise eligible under this article who is a former prisoner of war may apply for special license plates for the vehicle under this article. The special plates assigned to the vehicle shall run in a separate numerical series and shall have inscribed on the plate the letters "POW" and four numbers that shall be two and three-quarters inches in height. The department shall, pursuant to this article, reserve and issue the license plates provided for by this section only to persons who show by satisfactory proof his or her former prisoner of war status. Any person otherwise issued license plates within this series pursuant to this article prior to January 1, 1982, may retain them.

(b) In addition to the regular fees for an original registration or renewal of registration, the additional fees specified in subdivisions (a) and (d) of Section 5106 and Section 5108, as applicable, shall be paid.

(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. 4. Section 5101.5 is added to the Vehicle Code, to read:

5101.5. (a) Any person otherwise eligible under this article who is a former American prisoner of war may apply for special license plates for the vehicle under this article. The special plates assigned to the vehicle shall run in a separate numerical series and contain a replica design of the American Prisoner of War Medal followed by the letters "POW" and four numbers. The special license plates issued under this subdivision also shall contain the following words: "Ex-Prisoner of War." The department shall, pursuant to this article,

reserve and issue the license plates provided for by this section only to persons who show by satisfactory proof his or her former prisoner of war status. Any person otherwise issued license plates within this series pursuant to this article prior to January 1, 1982, may retain them.

(b) Special license plates may be issued pursuant to subdivision (a) only for a vehicle owned or coowned by a former American prisoner of war.

(c) Upon the death of a person issued special license plates pursuant to this section, his or her surviving spouse may retain the special license plates subject to the conditions set forth in this section. Upon the death of the spouse, the retained special license plates shall be returned to the department either (1) within 60 days following that death or (2) upon the expiration of the vehicle registration, whichever occurs first.

(d) Any vehicle exempted from fees by Section 9105 and by Section 10783 of the Revenue and Taxation Code shall lose the exemption upon the death of the former American prisoner of war.

(e) Sections 5106 and 5108 do not apply to this section.

(f) The department shall recall all former prisoner-of-war license plates issued pursuant to this section prior to January 1, 1999, and shall issue to the holder of those plates, without charge, the revised plates authorized by this section.

(g) This section shall become operative on July 1, 1999.

SEC. 5. Section 9105 of the Vehicle Code is amended to read:

9105. (a) The fees specified in this code, except fees for duplicate plates, certificates, or cards, need not be paid for any of the following vehicles, which are of a type subject to registration under this code, and which are not used for transportation for hire, compensation, or profit, when owned by any disabled veteran or any Congressional Medal of Honor recipient:

(1) Any passenger motor vehicle.

(2) Any motorcycle.

(3) Any commercial motor vehicle of less than 6,001 pounds unladen weight.

The exemption granted by this section shall not extend to more than one vehicle owned by any disabled veteran or Congressional Medal of Honor recipient. The department may require any disabled veteran applying for an exemption under this section to submit a certificate signed by a physician or surgeon substantiating the disability. Any person applying for an exemption under this section by reason of receiving the Congressional Medal of Honor shall submit satisfactory proof that he or she is a Congressional Medal of Honor recipient.

(b) 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. 6. Section 9105 is added to the Vehicle Code, to read:

9105. (a) The fees specified in this code, except fees for duplicate plates, certificates, or cards, need not be paid for any of the following vehicles, that are of a type subject to registration under this code, and that are not used for transportation for hire, compensation, or profit, when owned by any former American prisoner of war, any disabled veteran, or any Congressional Medal of Honor recipient:

(1) Any passenger motor vehicle.

(2) Any motorcycle.

(3) Any commercial motor vehicle of less than 8,001 pounds unladen weight.

(b) The exemption granted by subdivision (a) shall not extend to more than one vehicle owned by any former American prisoner of war, any disabled veteran, or any Congressional Medal of Honor recipient and is applicable to the same vehicle as described in subdivision (b) of Section 10783 of the Revenue and Taxation Code.

(c) (1) The department may require any disabled veteran applying for an exemption under this section to submit a certificate signed by a physician or surgeon substantiating the disability.

(2) The department may require any person applying for an exemption under this section for either of the following reasons to do any of the following:

(A) By reason of the person's status as a former prisoner of war, to show, by satisfactory proof, his or her former prisoner-of-war status.

(B) By reason of the person's status of receiving the Congressional Medal of Honor, to show, by satisfactory proof, that he or she is a Congressional Medal of Honor recipient.

(d) This section shall become operative on July 1, 1999.

CHAPTER 564

An act to amend Section 34457 of the Government Code, relating to voting.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. Section 34457 of the Government Code is amended to read:

34457. After the charter prepared by the charter commission has been filed in the office of the clerk of the governing body of the city or city and county pursuant to Section 34455, the proposed charter shall be submitted to the voters of the city or city and county at either a special election called within 14 days by the governing body for that purpose to be conducted at least 95 days after the date the special

election is called, or at the next established municipal election date or at the next established election date pursuant to Section 1000 of the Elections Code, provided there are at least 95 days before the election.

CHAPTER 565

An act to amend Sections 25658 and 25659 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. Section 25658 of the Business and Professions Code is amended to read:

25658. (a) Every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor.

(b) Any person under the age of 21 years who purchases any alcoholic beverage, or any person under the age of 21 years who consumes any alcoholic beverage in any on-sale premises, is guilty of a misdemeanor.

(c) Any on-sale licensee who knowingly permits a person under the age of 21 years to consume any alcoholic beverage in the on-sale premises, whether or not the licensee has knowledge that the person is under the age of 21 years, is guilty of a misdemeanor.

(d) (1) Except as otherwise provided in paragraph (2), any person who violates this section shall be punished by a fine of two hundred fifty dollars ($250), no part of which shall be suspended, or the person shall be required to perform not less than 24 hours or more than 32 hours of community service during hours when the person is not employed and is not attending school, or a combination of fine and community service as determined by the court.

(2) Any person who violates subdivision (a) by furnishing an alcoholic beverage, or causing an alcoholic beverage to be furnished, to a minor shall be punished by a fine of one thousand dollars ($1,000), no part of which shall be suspended, and the person shall be required to perform not less than 24 hours of community service during hours when the person is not employed and is not attending school.

(e) Persons under the age of 21 years may be used by peace officers in the enforcement of this section to apprehend licensees, or employees or agents of licensees, who sell alcoholic beverages to minors. Notwithstanding subdivision (b), any person under the age of 21 years who purchases or attempts to purchase any alcoholic beverage while under the direction of a peace officer is immune from

prosecution for that purchase or attempt to purchase an alcoholic beverage. Guidelines with respect to the use of persons under the age of 21 years as decoys shall be adopted and published by the department in accordance with the rulemaking portion 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). Law enforcement-initiated minor decoy programs in operation prior to the effective date of regulatory guidelines adopted by the department shall be authorized as long as the minor decoy displays to the seller of alcoholic beverages the appearance of a person under the age of 21 years. This subdivision shall not be construed to prevent the department from taking disciplinary action against a licensee who sells alcoholic beverages to a minor decoy prior to the department's final adoption of regulatory guidelines. After the completion of every minor decoy program performed under this subdivision, the law enforcement agency using the decoy shall notify licensees of the results of the program.

SEC. 1.5. Section 25658 of the Business and Professions Code is amended to read:

25658. (a) Except as otherwise provided in subdivision (c), every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor.

(b) Any person under the age of 21 years who purchases any alcoholic beverage, or any person under the age of 21 years who consumes any alcoholic beverage in any on-sale premises, is guilty of a misdemeanor.

(c) Any person who violates subdivision (a) by purchasing an alcoholic beverage for a person under the age of 21 years and the person under the age of 21 years thereafter consumes the alcohol and thereby proximately causes great bodily injury or death to himself, herself, or any other person, is guilty of a misdemeanor.

(d) Any on-sale licensee who knowingly permits a person under the age of 21 years to consume any alcoholic beverage in the on-sale premises, whether or not the licensee has knowledge that the person is under the age of 21 years, is guilty of a misdemeanor.

(e) (1) Except as otherwise provided in paragraph (2) or (3), any person who violates this section shall be punished by a fine of two hundred fifty dollars ($250), no part of which shall be suspended, or the person shall be required to perform not less than 24 hours or more than 32 hours of community service during hours when the person is not employed and is not attending school, or a combination of fine and community service as determined by the court.

(2) Any person who violates subdivision (a) by furnishing an alcoholic beverage, or causing an alcoholic beverage to be furnished, to a minor shall be punished by a fine of one thousand dollars ($1,000), no part of which shall be suspended, and the person shall be required

to perform not less than 24 hours of community service during hours when the person is not employed and is not attending school.

(3) Any person who violates subdivision (c) shall be punished by imprisonment in a county jail for a minimum term of six months not to exceed one year, by a fine not exceeding one thousand dollars ($1,000), or by both imprisonment and fine.

(f) Persons under the age of 21 years may be used by peace officers in the enforcement of this section to apprehend licensees, or employees or agents of licensees, who sell alcoholic beverages to minors. Notwithstanding subdivision (b), any person under the age of 21 years who purchases or attempts to purchase any alcoholic beverage while under the direction of a peace officer is immune from prosecution for that purchase or attempt to purchase an alcoholic beverage. Guidelines with respect to the use of persons under the age of 21 years as decoys shall be adopted and published by the department in accordance with the rulemaking portion 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). Law enforcement-initiated minor decoy programs in operation prior to the effective date of regulatory guidelines adopted by the department shall be authorized as long as the minor decoy displays to the seller of alcoholic beverages the appearance of a person under the age of 21 years. This subdivision shall not be construed to prevent the department from taking disciplinary action against a licensee who sells alcoholic beverages to a minor decoy prior to the department's final adoption of regulatory guidelines. After the completion of every minor decoy program performed under this subdivision, the law enforcement agency using the decoy shall notify licensees of the results of the program.

SEC. 2. Section 25659 of the Business and Professions Code is amended to read:

25659. For the purpose of preventing the violation of Section 25658, any licensee, or his or her agent or employee, may refuse to sell or serve alcoholic beverages to any person who is unable to produce adequate written evidence that he or she is over the age of 21 years. A licensee, or his or her agent or employee, may seize any identification presented by a person that shows the person to be under the age of 21 years or that is false, so long as a receipt is given to the person from whom the identification is seized and the seized identification is given within 24 hours of seizure to the local law enforcement agency that has jurisdiction over the licensed premises. A licensee, his or her agent or employees decision to not seize a license shall not create any civil or criminal liability.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 25658 of the Business and Professions Code proposed by both this bill and AB 1204. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 25658 of the Business and Professions Code,

and (3) this bill is enacted after AB 1204, in which case Section 1 of this bill shall not become operative.

CHAPTER 566

An act to amend Section 120440 of the Health and Safety Code, relating to health.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Early childhood immunizations are essential to protect the health of California children, yet a substantial proportion of children do not receive timely standard immunizations.

(2) In response to this problem, since fiscal year 1995–96, the Governor has proposed, and the Legislature has approved, an appropriation of 3.5 million dollars ($3,500,000) in each budget year for the implementation of immunization tracking systems.

(3) Communitywide immunization tracking systems maintain current immunization records, including records of severe immunization reactions, on all children. This information is used to immediately provide physicians with complete immunization histories of new patients who come into their offices, to issue reminder notifications to families when immunizations are due, and to identify subpopulations of children with low immunization coverage.

(4) Because of the importance of these systems, the Legislature enacted legislation authorizing local health departments and the State Department of Health Services to operate communitywide immunization tracking systems and allowing physicians to regularly input patient identification and immunization history information to these systems, provided that the patient has been notified in advance and does not object.

(5) Schools and child care facilities are mandated by law to require certain immunizations for attendance and to obtain and maintain immunization records on their pupils and clients. When a family has lost immunization records, it can be difficult and time consuming for them and their health care providers to obtain the necessary records in order that their children may be admitted to these institutions.

(6) Women, infants and children supplemental nutrition (WIC) programs serve infants and young children who are at highest risk of underimmunization. Reviewing client immunization status at WIC service sites and referring behind schedule infants and children to

their physicians for immunization has been shown to substantially increase immunization coverage, without restricting any WIC program benefits to families. Several WIC service sites in California perform this activity, using state or federal funds. However, WIC staff cannot assess immunization records if clients fail to provide them, or if the records they provide are incomplete.

(7) Many health care plans are required by law to provide standard childhood immunizations as benefits. These plans need updated information on immunizations received by beneficiaries to provide optimal immunization services to them, to facilitate payments to health care providers, and to assess how well their clients are immunized. Lack of ready access to complete current immunization records of their clients impedes these functions.

(8) Existing law requires schools, child care facilities, WIC service sites, and health care plans in California to have specific and well-established procedures for maintaining the confidentiality of patient and client records containing immunization histories, as well as to provide for patient or client access to these records. Wrongful disclosure of confidential personal and medical information is subject to civil and criminal penalties.

(b) In light of all the findings set forth in subdivision (a), in enacting this legislation, it is the intent of the Legislature to help infants and children receive immunizations in a more timely manner through immunization tracking systems providing appropriate information to specified agencies and entities serving these clients.

SEC. 2. Section 120440 of the Health and Safety Code is amended to read:

120440. (a) For the purposes of this chapter, the following definitions shall apply:

(1) "Health care provider" means any person licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code or a clinic or health facility licensed pursuant to Division 2 (commencing with Section 1200).

(2) "Schools, child care facilities, and family child care homes" means those institutions referred to in subdivision (b) of Section 120335, regardless of whether they directly provide immunizations to patients or clients.

(3) "WIC service provider" means any public or private nonprofit agency contracting with the department to provide services under the California Special Supplemental Food Program for Women, Infants, and Children, as provided for in Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106.

(4) "Health care plan" means a health care service plan as defined in subdivision (f) of Section 1345 or an insurer as described in Sections 10123.5 and 10123.55 of the Insurance Code, regardless of whether the plan directly provides immunizations to patients or clients.

(b) Local health officers may operate immunization information systems pursuant to their authority under Section 120175, in

conjunction with the Immunization Branch of the State Department of Health Services.

(c) Notwithstanding any other provision of law, unless a refusal to permit recordsharing is made pursuant to subdivision (e), health care providers may disclose the information set forth in paragraphs (1) to (9), inclusive, from the patient's medical record to local health departments operating countywide immunization information and reminder systems and the State Department of Health Services. Local health departments and the State Department of Health Services may disclose the information set forth in paragraphs (1) to (9), inclusive, to other local health departments and health care providers taking care of the patient, upon request for information pertaining to a specific person. Local health departments and the State Department of Health Services may disclose the information in paragraphs (1) to (6), inclusive, and paragraphs (8) and (9) to, schools, child care facilities, and family child care homes to which the person is being admitted or in attendance, and WIC service providers providing services to the person and health care plans arranging for immunization services for the patient, upon request for information pertaining to a specific person. The following information shall be subject to this subdivision:

(1) The name of the patient and names of the patient's parents or guardians.

(2) Date of birth of the patient.

(3) Types and dates of immunizations received by the patient.

(4) Manufacturer and lot number for each immunization received.

(5) Adverse reaction to immunizations received.

(6) Other nonmedical information necessary to establish the patient's unique identity and record.

(7) Current address and telephone number of the patient and the patient's parents or guardians.

(8) Patient's gender.

(9) Patient's place of birth.

(d) (1) Health care providers, local health departments, and the State Department of Health Services shall maintain the confidentiality of information listed in subdivision (c) in the same manner as other medical record information with patient identification that they possess. These providers and departments are subject to civil action and criminal penalties for the wrongful disclosure of the information listed in subdivision (c), in accordance with existing law. They shall use the information listed in subdivision (c) only for the following purposes:

(A) To provide immunization services to the patient, including issuing reminder notifications to patients or their parents or guardians when immunizations are due.

(B) To provide or facilitate provision of third-party payer payments for immunizations.

(C) To compile and disseminate statistical information of immunization status on groups of patients or populations in California, without patient identifying information for these patients included in these groups or populations.

(2) Schools, child care facilities, family child care homes, WIC service providers, and health care plans shall maintain the confidentiality of information listed in subdivision (c) in the same manner as other client, patient, and pupil information that they possess. These institutions and providers are subject to civil action and criminal penalties for the wrongful disclosure of the information listed in subdivision (c), in accordance with existing law. They shall use the information listed in subdivision (c) only for those purposes provided in subparagraphs (A) to (C), inclusive, of paragraph (1) and as follows:

(A) In the case of schools, child care facilities, and family child care homes, to carry out their responsibilities regarding required immunization for attendance, as described in Chapter 1 (commencing with Section 120325).

(B) In the case of WIC service providers, to perform immunization status assessments of clients and to refer those clients found to be due or overdue for immunizations to health care providers.

(C) In the case of health care plans, to facilitate payments to health care providers, to assess the immunization status of their clients, and to tabulate statistical information on the immunization status of groups of patients, without including patient-identifying information in these tabulations.

(e) A patient or a patient's parent or guardian may refuse to permit recordsharing. The health care provider administering immunization shall inform the patient or the patient's parent or guardian of the following:

(1) The information listed in subdivision (c) may be shared with local health departments, and the State Department of Health Services. The health care provider shall provide the name and address of the department or departments with which the provider will share the information.

(2) Any of the information shared with local health departments and the State Department of Health Services shall be treated as confidential medical information and shall be used only to share with health care providers, schools, child care facilities, family child care homes, WIC service providers, and health care plans, upon request. These providers, agencies, and institutions shall, in turn, treat the shared information as confidential, and shall use it only as described in subdivision (d).

(3) The patient or patient's parent or guardian has the right to examine any immunization-related information shared in this manner and to correct any errors in it.

(4) The patient or the patient's parent or guardian may refuse to allow this information to be shared in the manner described, or to receive immunization reminder notifications at any time, or both.

(f) If the patient or patient's parent or guardian refuses to allow the information to be shared, pursuant to paragraph (4) of subdivision (e), the health care provider shall not share this information in the manner described in subdivision (c).

(g) Upon request of the patient or the patient's parent or guardian, in writing or by other means acceptable to the recipient, a local health department or the State Department of Health Services that has received information about a person pursuant to subdivision (c) shall do all of the following:

(1) Provide the name and address of other persons or agencies with whom the recipient has shared the information.

(2) Stop sharing the information in its possession after the date of the receipt of the request.

(h) Upon notification, in writing or by other means acceptable to the recipient, of an error in the information, a local health department or the State Department of Health Services that has information about a person pursuant to subdivision (c) shall correct the error. If the recipient is aware of a disagreement about whether an error exists, information to that effect may be included.

(i) Section 120330 shall not apply to this section.

CHAPTER 567

An act to add Chapter 9.5 (commencing with Section 71000) to Part 2 of Division 22 of the Food and Agricultural Code, relating to the California Rice Commission, and making an appropriation therefor.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. Chapter 9.5 (commencing with Section 71000) is added to Part 2 of Division 22 of the Food and Agricultural Code, to read:

CHAPTER 9.5. CALIFORNIA RICE COMMISSION

Article 1. Declaration and General Provisions

71000. The production, milling and marketing of rice constitutes an important industry of this state that provides substantial and necessary revenues for the state and employment for its citizens.

71001. The maintenance of the rice industry of California is necessary to assure the public of a continuous supply of this vital product and the maintenance of needed levels of income for those engaged in the rice industry.

71002. The production and milling of rice in California has the potential to be one of the leading segments of the state's agricultural industry. To realize this potential, there is a need to make consumers aware of the nutritional value of rice, the high quality of the rice produced and milled in the state, the intricacies of rice culture, and the versatility of rice as part of a well-balanced diet. The activities made possible by the establishment of the commission will meet this need and further the interests of the industry and the state.

71003. The establishment of the commission is necessary for the efficient development and management of a national and international advertising and promotion program that will enhance the reputation of the California rice industry, create a more receptive environment for the industry and its products, and increase competitiveness of the California rice industry within the national and international marketplace. In addition, the commission is necessary to carry out the California rice industry's commitment to responsible stewardship and increasingly efficient cultural practices.

71004. The successes that the rice industry of California has enjoyed have come in part through a commitment to industry funded research that has led to significant improvements in the quality of the rice available to consumers and increasingly efficient cultural practices resulting in increased awareness of, and a more receptive environment for, the production and milling of rice in California. It has also led to rice being a better consumer value. The establishment of the commission will continue and enhance this research effort and move the rice industry toward its potential, resulting in increased consumer value and enhanced grower returns.

71005. The production and milling of rice in this state is hereby declared to be affected with a public interest. This chapter is enacted in the exercise of the police power of this state for the purposes of protecting the health, peace, safety, and general welfare of the people of this state.

71006. No action taken by the commission, or by any individual in accordance with this chapter or with the regulations adopted under this chapter, is a violation of the so-called Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), the Unfair Practices Act (Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code), or any statutory or common law against monopolies or combinations in restraint of trade. The Legislature intends this program to be among those contemplated by Congress in the enactment of Section 610(i) of Title 7 of the United States Code.

71007. This chapter shall be liberally construed. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

71008. It is hereby declared as a matter of legislative determination that commission members and alternates are intended to represent and further the interest of a particular industry concerned and that this representation and furtherance is intended to serve the public interest. Accordingly, the Legislature finds that with respect to persons who are elected or appointed to the commission, the particular industry concerned is tantamount to and constitutes the public generally within the meaning of Section 87103 of the Government Code.

71009. Opportunity exists for continued growth and expansion of the rice industry by creating new markets. The success of such an expansion program is uniquely dependent upon effective advertising, promotion, and research, since the creation of new markets is essentially a matter of educating and informing people of the use, nutritional value, and availability of the commodity and enhancing the reputation of the California rice industry. The expansion of the rice industry also provides an important source of jobs for many people in this state, a high proportion of whom reside in historically depressed areas of the state, and serves to ensure the preservation of an agrarian society.

71010. The commission form of administration created by this chapter is uniquely situated to provide those engaged in the production and milling of rice the opportunity to avail themselves of the benefits of collective action of the broad fields of development, maintenance, and expansion of markets, marketing research, education, advertising and promotion, and production and processing research necessary to achieve the purposes stated herein.

Article 2. Definitions

71020. Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

71021. "Books and records" means books, records, contracts, documents, memoranda, papers, correspondence, or other written data pertaining to matters relating to the activities subject to this chapter.

71022. "Commission" means the California Rice Commission.

71023. (a) "Districts" consist of the following:

(1) District 1 consists of Butte County.

(2) District 2 consists of Colusa County.

(3) District 3 consists of Glenn County and Tehama County, and any county north of those counties where rice is produced.

(4) District 4 consists of Yuba and Sutter Counties.

(5) District 5 consists of Sacramento, San Joaquin, Placer, and Yolo Counties and any county south of those counties where rice is produced.

(b) The commission, upon a two-thirds vote of the membership of the commission, may change the districts.

71024. "Ex officio member" means a nonvoting member of the commission.

71025. "Handle" means to engage in the business of being a handler. It does not include the drying of rice.

71026. "Handler" means any person who is engaged in this state in the business of marketing rice who handles 100,000 hundredweight or more of rough or "paddy" rice, or the equivalent amount of milled rice during a marketing season. It is the Legislature's intent that this provision be construed so that every person engaged in the handling of 100,000 hundredweight or more of rice produced in California is subject to assessment pursuant to this chapter.

71027. "Hundredweight" or "Cwt." are synonymous and mean 100 pounds avoirdupois, excluding tare.

71028. "Market" or "marketing" means to sell rice to a person other than a handler.

71029. "Marketing research" means any research relating to the sale of rice.

71030. "Marketing season" or "fiscal year" are synonymous terms and mean the period beginning September 1 of any year and extending through the last day of August of the following year.

71031. "Person" means any individual, partnership, limited liability partnership, corporation, limited liability corporation, firm, company, or other entity doing business in California.

71032. "Producer" means any person who produces, or causes to be produced, rice.

71033. "Production research" means any research relating to the production, harvest, and postharvest handling of rice.

71034. "Public member" means the person appointed by the commission pursuant to Section 71050. The public member and his or her alternate shall not have any financial interest in the production or handling of rice.

71035. "Rice" means all rough or "paddy" rice or milled rice (Oryza sativa L.) from any source handled within the state of California, including mochi rice (sweet rice). It does not include rice produced for seed or wild rice (Zinzania aquatica; Zinzania palustris).

71036. "Secretary" means the Secretary of Food and Agriculture.

71037. "Sell" means to transfer or cause the transfer of title to rice for valuable consideration.

Article 3. California Rice Commission

71050. (a) There is in the state government the California Rice Commission. The commission is composed of equal numbers of handler members and producer members as set forth in this section. In addition, there may be one public member.

(b) Each eligible handler may appoint one member and one alternate member annually.

(c) Producer members and alternate members in a number equal to the number of appointed handler members shall be elected by district.

(d) The number of producers to be elected from each district shall be determined as follows:

(1) Each district shall have at least one representative.

(2) The allocation of any seats remaining after the allocation in paragraph (1) shall be made by dividing the total number of acres in the state planted in rice in the marketing season immediately preceding the determination by the total number of eligible handler members and dividing the acreage planted in rice in each district, starting with the district having the largest acreage planted in rice by the result and rounding to the nearest whole number.

(e) No handler who is more than 90 days delinquent in the payment of assessments or filing of reports required pursuant to this chapter is eligible to serve on the commission. If a handler is made ineligible to serve pursuant to this subdivision, the member representing District 1 who received the lowest vote total among members representing District 1 is also ineligible to serve by operation of law in order to maintain an equal number of eligible handler and producer members. Additional members are ineligible to serve by operation of law as needed in order to maintain an equal number of handler and producer members and shall be selected from the remaining districts in ascending order of the number of the district. No member who is the sole representative of a district is ineligible to serve as a result of the operation of this subdivision. Without regard to whether any ineligible producer member representing a district has been reinstated, no subsequent producer member is ineligible to serve by operation of law from any district until at least one member is ineligible to serve by operation of law from each district except those that have only one representative.

(f) Members who are ineligible to serve by operation of law pursuant to subdivision (e) shall be immediately disqualified from voting on matters before the commission.

The eligibility of handler and producer members shall be reinstated at the first meeting after the handler's payments and reports are made current.

(g) The commission shall annually establish the number of eligible handler members of the commission based on the volume of rice handled in the immediately preceding marketing season, and, if

necessary, adjust and reallocate the number of producer members. Any additional producer members shall be elected at the next regularly scheduled election of producer members. Any handler who does not appoint a member and alternate within 15 days of being notified of his or her eligibility shall be deemed to have waived his or her right to a seat for the then current marketing season and shall not be counted in the calculation of producer seats.

(h) The public member, if any, shall be appointed to the commission by the secretary from the nominees recommended by the commission.

71051. (a) The secretary may require the commission to correct or cease any existing activity or function that is determined by the secretary not to be in the public interest or that is in violation of this chapter.

(b) If the commission refuses or fails to cease those activities or functions or to make the corrections as required by the secretary, the secretary may, upon written notice, suspend all or a portion of the activities or functions of the commission until the time that the cessation or correction of activities or functions as required by the secretary has been accomplished by the commission.

(c) Actions of the commission in violation of the written notice are without legal force or effect. The secretary, to the extent feasible, shall issue the written notice prior to the commission entering into any contractual relationship affecting the existing or proposed activities or functions that are the subject of the written notice.

(d) Upon service of the written notice, the secretary shall notify the commission in writing of the specific acts that the secretary determines are not in the public interest or are in violation of this chapter, his or her reasons for requiring a cessation or correction of specific existing or proposed activities or functions, and recommendations that will make the activities or functions acceptable.

71052. When the secretary is required to concur in a decision of the commission, the secretary shall give his or her response to the commission within 15 working days from notification of the decision. The secretary shall set forth in writing with specificity the reasons for any refusal to concur. The secretary's response may be a requirement that additional information be provided.

71053. The commission shall reimburse the secretary for all expenditures incurred by the secretary in carrying out his or her duties and responsibilities pursuant to this chapter. However, a court may, if it finds that the secretary acted arbitrarily or capriciously in restricting the activities or functions of the commission, relieve the commission of the responsibility for payment of the secretary's legal costs with regard to that action.

71054. Except for ex officio members, an alternate for each member shall be appointed in the same manner as the member. An alternate shall, in the absence of the member for whom he or she is

an alternate, serve in place of the member and shall have, and be able to exercise, all the rights, privileges, and powers of the member when serving on the commission. In the event of a change in status making a member ineligible to serve, or due to death, removal, resignation, or disqualification of a member, the alternate shall act as a member of the commission until a qualified successor is appointed. The ineligibility of any member pursuant to Section 71050 does not create an absence within the meaning of this section.

71055. Any vacancy on the commission occurring by the failure of any person elected to the commission as a member or alternate to continue in his or her position due to a change in status making him or her ineligible to serve, or due to death, removal, or resignation, shall be filled by another eligible person for the unexpired portion of the term by a majority vote of the remaining members of the commission. The person shall fulfill all the qualifications set forth in this article as required for the person whose office he or she is to occupy. The ineligibility of any handler member and concurrent ineligibility of any producer member pursuant to Section 71050 shall not create a vacancy within the meaning of this section.

71056. Any vacancy on the commission occurring by the failure of the public member to continue in his or her position due to a change in status making him or her ineligible to serve, or due to death, removal, resignation, or disqualification, may be filled by another eligible person for the unexpired portion of the term by the secretary from nominees recommended by the commission. The person shall fulfill all the qualifications set forth in this article as required for the member whose office he or she is to occupy.

71057. Any producer member and his or her alternate on the commission shall be an individual producer or an employee or representative of a producer who has a financial interest in producing rice or causing rice to be produced. The qualifications of producer members and their alternates shall be maintained during their entire term of office. The absence of both the member and alternate at two consecutive meetings shall be grounds for the commission to declare the seat vacant.

71058. Any handler member and his or her alternate on the commission shall be an individual handler or an employee or representative of a handler who has a financial interest in handling rice. The qualifications of handler members and their alternates shall be maintained during their entire term of office. The absence of both the member and alternate at two consecutive meetings shall be grounds for the commission to declare the seat vacant.

71059. Except as otherwise provided in this section, the public member and his or her alternate member on the commission shall have all the powers, rights, and privileges of any other member or alternate, respectively, on the commission. The public member and his or her alternate member shall not have a vote on issues regarding the assessments established pursuant to Section 71120.

71060. Producer members shall serve three-year terms and until their successors are qualified, except, that of the first producer members of the commission one-third shall serve one year, one-third shall serve two years, and one-third shall serve three years. The determination of the term of each member shall be made by lot. Members representing the same district shall draw lots among themselves to ensure that terms within a single district are not concurrent.

71061. The commission shall be, and is hereby declared and created, a corporate body. It may sue and be sued regarding any matter related to the purposes of this chapter, contract and be contracted with, and has and possesses all of the powers of a corporation. It may adopt a corporate seal. Copies of its proceedings, records, and acts, when authenticated, shall be prima facie evidence of the truth of all statements therein.

71062. A majority of the membership of the commission appointed or elected shall constitute a quorum of the commission. The vote of a majority of the members present at a meeting at which there is a quorum constitutes the act of the commission. The commission may continue to transact business at a meeting at which a quorum is initially present, notwithstanding the withdrawal of members, provided any action is approved by the requisite majority of the required quorum.

71063. The secretary or his or her representatives shall be notified and may attend each meeting of the commission and any committee meetings of the commission. However, the secretary or his or her representative is not entitled to attend an executive session of the commission or a committee of the commission called for the purpose of discussing potential or actual litigation against the department.

71064. No member or alternate of the commission or member of a committee established by the commission who is a nonmember of the commission shall receive a salary. Each member of the commission and each alternate serving in place of a member, except ex officio members who are officers or employees of a public agency, and each member of a committee established by the commission who is a nonmember of the commission, may receive reasonable and necessary traveling expenses and meal allowances as approved by the commission for each day spent in actual attendance at, or in traveling to and from, meetings of the commission or committees of the commission, or on special assignment for the commission.

71065. All funds received by any person from the assessments levied under this chapter or otherwise received by the commission shall be deposited in banks that the commission may designate and shall be disbursed by order of the commission through an agent or agents as it may designate for that purpose. The agent or agents shall be bonded by a fidelity bond, executed by a surety company authorized to transact business in this state, in favor of the

commission, in an amount of not less than twenty-five thousand dollars ($25,000).

71066. 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 are limited to the funds collected by the commission. No member or alternate of the commission, or any employee or agent thereof, is personally liable for the contracts of the commission. No member or alternate of the commission, or any employee or agent thereof, is responsible individually in any way to any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, or employee, except for his or her own individual acts of dishonesty or crime. No member or alternate of the commission, or any employee or agent thereof, is responsible individually for any act or omission of any other member or alternate of the commission, or any employee or agent thereof. No member or alternate of the commission, or any employee or agent thereof, is liable for the default of any other member or alternate of the commission, or any employee or agent thereof.

Article 4. Powers and Duties

71070. The powers and duties of the commission shall include, but are not limited to, all of those contained in this article.

71071. The commission may adopt and from time to time alter, rescind, modify, and amend all proper and necessary bylaws, rules, regulations, and orders in accordance with commission procedures for purposes of carrying out this chapter, including rules for appeals from any bylaw, rule, regulation, operating procedure, or order of the commission.

71072. The commission may administer and enforce this chapter and do and perform all acts and exercise all powers incidental to, or in connection with, or deemed reasonably necessary, to promote, maintain, and enhance the rice industry.

71073. The commission may appoint its own officers, including a chairperson, one or more vice chairpersons, and other officers as it deems necessary. The officers have the powers and duties delegated to them by the commission.

71074. (a) The commission may employ a person to serve at the pleasure of the commission as president and chief executive officer of the commission, and other personnel, including legal counsel of its choice, necessary to carry out this chapter. If any person employed by the commission 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 person.

(b) The commission may retain a management firm or the staff from any board, commission, or committee of the state or federal government to perform the functions prescribed by this section under the direction of the commission.

(c) If requested by an advisory board, board of directors, or any authorized agent, the commission may administer any governmental program related to the rice industry.

71075. The commission may fix the compensation for all employees of the commission.

71076. The commission may appoint committees composed of both members and nonmembers of the commission to advise the commission in carrying out this chapter.

71077. The commission may establish offices and incur expenses, enter into any and all contracts and agreements, create liabilities, develop, own, and control the use of any intellectual property, 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.

71078. The commission shall keep accurate books, records, and accounts of all of its dealings, which shall be subject to an annual audit by an auditing firm selected by the commission with the concurrence of the secretary. A summary of the audit shall be reported to all persons subject to this chapter, a copy of which shall also be submitted to the department. In addition, the secretary, as he or she determines necessary, may conduct or cause to be conducted a fiscal and compliance audit of the commission.

71079. The commission may present facts to, and negotiate with, local, state, federal, and foreign agencies on matters that affect the rice industry.

71080. The commission may promote the sale of rice by advertising and any other promotional means, including cost-sharing advertising, for the purpose of maintaining and expanding present markets and creating new and larger intrastate, interstate, and foreign markets for rice, and to educate and instruct the public with respect to the uses, healthful properties, and nutritional value of rice.

71081. The commission may educate and instruct the wholesale and retail trade with respect to proper methods of handling and selling rice, and conduct consumer surveys and analyses.

71082. The commission may conduct, and contract with others to conduct, scientific research, including the study, analysis, dissemination, and accumulation of information obtained from research or elsewhere, respecting cultural, production and postharvest practices, and the marketing and distribution of rice. The results of any research conducted by or on behalf of the commission may be used by the commission in any way it deems appropriate.

71083. The commission may contract to receive and render services in formulating and conducting plans and programs and enter into other contracts or agreements that the commission deems necessary to carry out this chapter.

71084. The commission may accept contributions of, or match private, state, or federal funds, and employ or make contributions of funds to other persons or state or federal agencies for purposes of promoting, enhancing, and maintaining the rice industry.

71085. The commission may collect information, including, but not limited to, industry crop statistics, and publish and distribute without charge, a bulletin or other communication to handlers and producers of rice.

71086. The commission shall establish an assessment rate to defray operating costs of the commission.

71087. The commission shall establish an annual budget according to generally accepted accounting practices. The budget shall be concurred in by the secretary prior to disbursement of funds, except for disbursements made pursuant to Section 71075.

71088. The commission shall submit to the secretary for his or her concurrence an annual statement of contemplated activities authorized pursuant to this chapter.

71089. (a) The commission and the secretary shall keep confidential and shall not disclose, except when required by court order after a hearing in a judicial proceeding, all lists in their possession of persons subject to this chapter. However, the commission shall establish procedures to provide access to communication with other producers and handlers regarding noncommercial matters affecting the commission and persons subject to its jurisdiction. The access shall not include the actual release of the list of the names and addresses of producers and handlers in the possession of the commission or the secretary. In addition, notwithstanding any other provision of law, all proprietary or trade secret information developed or gathered pursuant to this chapter, including, but not limited to, names and addresses of handlers, producers, processors, wholesalers, retailers, brokers and shippers, individual quantities produced, handled, shipped, bought or sold, prices paid, and the products of research obtained by the commission, or by the department on behalf of the commission, from any source is confidential and shall not be considered a public record as that term is defined in Section 6252 of the Government Code.

(b) Upon receipt of a request for information from a person establishing cause for the request, the department shall direct the commission to provide the requesting person any record in the commission's possession, except that any proprietary information shall be removed before disclosure.

71090. The commission may investigate and prosecute civil violations of this chapter and file complaints with appropriate law

enforcement agencies or officers for suspected criminal violations of this chapter.

71091. The commission may appoint any person to serve as an ex officio member.

Article 5. Implementation and Voting Procedures

71100. (a) Within 15 days of a request from any handler or producer, the secretary shall establish a list of handlers and producers eligible to vote on implementation of this chapter. The secretary may require handlers and producers to submit the names and mailing addresses of all producers and handlers. The secretary also may require that the information provided include information on the volume of rice handled by each handler, or produced by each producer or, in the alternative, may establish procedures for receiving the information at the time of the referendum vote specified in Section 71101. The request for the information shall be in writing and shall be filed within 10 days following receipt of the request.

(b) Any handler or producer eligible to vote whose name does not appear on the appropriate list may have his or her name placed on the list by filing with the secretary a signed statement, identifying himself or herself as a person eligible to vote. Failure to be on the list does not exempt the person from paying assessments and does not invalidate any industry votes conducted pursuant to this article.

(c) Any handler or producer eligible to vote may contact those on the list regarding the referendum in a form and manner prescribed by the secretary if all expenses associated with those contacts are paid in advance.

71101. This chapter, except as necessary to conduct an implementation referendum vote, shall not become operative until the secretary finds the following in a referendum vote conducted by the secretary:

(a) At least 40 percent of the total number of handlers from the list established by the secretary pursuant to this article participate, and that either of the following occurs:

(1) Sixty-five percent of the handlers who voted in the referendum voted in favor of this chapter, and the handlers so voting handled a majority of the total quantity of rice handled in the preceding marketing season by all of the handlers voting in the referendum.

(2) A majority of the handlers who voted in the referendum voted in favor of this chapter, and the handlers so voting handled 65 percent or more of the total quantity of rice handled in the preceding marketing season by all of the handlers voting in the referendum.

(b) At least 40 percent of the total number of producers from the list established by the secretary pursuant to this article participate, and that either of the following occurs:

(1) Sixty-five percent of the producers voting in the referendum voted in favor of this chapter, and the producers so voting produced a majority of the total quantity of rice produced in the preceding marketing season by all of the producers voting in the referendum.

(2) A majority of the producers voting in the referendum voted in favor of this chapter, and the producers so voting produced 65 percent or more of the total quantity of rice produced by all of the producers voting in the referendum.

71102. The secretary shall establish a period in which to conduct the referendum, which shall not be less than 10 days or more than 60 days in duration, and may prescribe additional procedures necessary to conduct the referendum. If the initial period established is less than 60 days, the secretary may extend the period. However, the total referendum period may not exceed 60 days.

71103. Nonreceipt of a ballot by an eligible handler or producer shall not invalidate a referendum.

71104. If the secretary finds that a favorable vote has been given as provided in Section 71101, the secretary shall certify and give notice of the favorable vote to all affected handlers and producers whose names and addresses are on file with the secretary.

71105. If the secretary finds that a favorable vote has not been given as provided in Section 71101, the secretary shall certify and declare all provisions of this chapter inoperative. The secretary may conduct other implementation referendum votes one year or more after the previous vote has been taken.

71106. Upon certification of the commission, the secretary shall terminate, effective at the end of the marketing season then current, consistent with the terms of the marketing order and Section 59088, any entity operating pursuant to an existing state marketing order affecting the same subject matter as this chapter. Notwithstanding the terms of the marketing order, or any provision of Chapter 1 (commencing with Section 58601) of Part 2 of Division 21, the secretary shall immediately upon certification of the commission, order the transfer of the marketing order's assets to the commission, except for those assets necessary to the proper winding up of the marketing orders affairs. This section shall not affect the continued operation of any existing rice research marketing order directly affecting producers of rice.

71107. (a) Prior to the referendum vote conducted by the secretary pursuant to this article, the proponents of the commission shall deposit with the secretary the amount that the secretary deems necessary to defray the expenses of preparing the necessary lists and information and conducting the vote.

(b) Any funds not used in carrying out Section 71101 shall be returned to the proponents of the commission who deposited the funds with the secretary.

(c) Upon establishment of the commission, the commission may reimburse the proponents of the commission for any funds deposited

with the secretary that were used in carrying out this article, and for any legal expenses and costs incurred in establishing the commission.

Article 6. Assessments and Records

71120. (a) The commission shall establish the assessment for the marketing season not later than September 1 of each year or as soon thereafter as is possible. The assessment shall not exceed ten cents ($0.10) per hundredweight for rice delivered to handlers by producers. Of the assessment, not more than five cents ($0.05) per hundredweight shall be assessed against handlers, and not more than five cents ($0.05) per hundredweight shall be assessed against producers. The assessment rate shall be the same for handlers and producers.

(b) An assessment greater than the amount specified in subdivision (a) may not be charged unless approved by a majority of the commission and by handlers and producers pursuant to procedures specified in Section 71101.

71121. (a) This chapter does not apply to handlers of less than 100,000 hundredweight in any marketing season or to rice produced only for a producer's home use or rice that is used only for ornamental purposes.

(b) If at any time during a marketing season the volume handled by a handler reaches 100,000 hundredweight or more, the handler shall be assessed for the initial 100,000 hundredweight and any additional volume handled during the marketing season. If the assessments on the initial 100,000 hundredweight are paid in the time and manner specified by the commission, the assessments shall not be considered past due.

(c) Notwithstanding Section 71026, the 100,000 hundredweight threshold established pursuant to this chapter shall remain in effect unless a higher threshold is approved by a majority of the commission and by those handlers remaining eligible under the proposed threshold and producers pursuant to procedures specified in Section 71101.

71122. Any person requesting an exemption from this chapter shall file an affidavit with the commission attesting that he or she is not a handler, as defined in Section 71026, or produces rice only for his or her own home use or for ornamental purposes. The affidavit shall contain all the information required by the commission. The commission shall review the affidavit, conduct any additional investigation it deems appropriate, and approve or deny the affidavit.

71123. Every person who handles rice in any quantity shall keep a complete and accurate record of all transactions involving the purchase or sale of rice and shall submit the record to the commission in the time and manner specified by the commission. The records shall be in a simple form and contain the information that the

commission prescribes. The records shall be preserved by the handler for a period of three years and shall be offered and submitted for inspection at any reasonable time upon written demand of the commission or its duly authorized agent.

71124. (a) All proprietary information obtained or developed pursuant to this article by the commission or the secretary from any source, including, but not limited to, the names and addresses of producers, is confidential and shall not be disclosed except when required by a court order after a hearing in a judicial proceeding.

(b) 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 gives only totals, but excludes individual information, may be disclosed by the commission.

71125. Any assessment that is levied as provided for in this chapter is a personal debt of every person assessed.

71126. (a) Only the first handler of rice is subject to the handler assessment and shall deduct the producer assessment from amounts paid by him or her to the producer and shall be a trustee of these assessments and assessments required to be paid by the handler until they are paid to the commission at the time and in the manner prescribed by the commission. Title to the assessments shall pass immediately to the commission and handlers shall hold the assessments in trust for the benefit of the commission and shall remit them, with assessment reports, in the time and manner specified by the commission. All first handlers, without regard to the volume handled, shall deduct and remit the producer assessment. Failure to collect the assessment from any producer shall not exempt the handler from liability. In addition, failure of a handler to remit the collected producer assessments to the commission shall not relieve the producer of this obligation.

(b) If rice is forfeited under a loan from the Commodity Credit Corporation, the handler shall pay both the producer and handler assessments if the rice is contracted to the handler. If the handler's total volume for the marketing season is less than 100,000 hundredweight, only the producer assessment shall apply. If the rice forfeited under a loan from the Commodity Credit Corporation is not contracted to a handler, the producer shall pay both the handler and producer assessments. If the total volume handled by the producer during the marketing season is less than 100,000 hundredweight, only the producer assessment shall apply.

71127. When the handler or producer is a corporation, all of the directors and officers of the corporation in their capacity as individuals shall be included, and any liability for violating this chapter, including, but not limited to, failing to pay assessments or file required reports, shall also include identical liability upon each director or officer of the corporation.

71128. Any person who fails to file a return or pay any assessment within the time required by the commission shall pay to the commission a penalty of 10 percent of the amount of the assessment determined to be due, and, in addition, shall pay 1 1/2 percent interest per month on the unpaid balance.

71129. In addition to any other penalty imposed, the commission may require any person who fails to pay an assessment or related charge pursuant to this article to furnish and maintain a surety bond in a form and amount, and for a period of time, specified by the commission as assurance that all payments to the commission will be made when due.

71130. It is a violation of state law for any person to do any of the following:

(a) Willfully render or furnish a false report, statement, or record required by the commission.

(b) Fail to render or furnish a report, statement, or record required by the commission.

(c) Secrete, destroy, or alter records required to be kept under this chapter.

71131. The commission shall establish procedures for the purpose of according individuals aggrieved by its actions or determinations an informal hearing before the commission or before a committee of the commission designated for that purpose. Appeals from decisions of the commission may be made to the secretary. The determination of the secretary shall be subject to judicial review upon petition filed with the appropriate superior court.

71132. (a) The commission may commence civil actions and utilize all remedies provided in law or equity for the collection of assessments and civil penalties and for the obtaining of injunctive relief or specific performance regarding this chapter and the regulations adopted pursuant to this chapter. A court shall issue to the commission any requested writ of attachment or injunctive relief upon a prima facie showing by verified complaint that a named defendant has violated this chapter or any other regulation of the commission, including, but not limited to, the nonpayment of assessments. No bond shall be required to be posted by the commission as a condition for the issuance of any writ of attachment or injunctive relief.

(b) A writ of attachment shall be issued pursuant to Chapter 4 (commencing with Section 485.010) of Title 6.5 of Part 2 of the Code of Civil Procedure, except that the showing specified in Section 485.010 of the Code of Civil Procedure is not required. Injunctive relief shall be issued pursuant to Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the showing of irreparable harm or inadequate remedy at law specified in Sections 526 and 527 of the Code of Civil Procedure is not required.

(c) Upon entry of any final judgment on behalf of the commission against any defendant, the court shall enjoin the defendant from conducting any type of business regarding rice until there is full compliance and satisfaction of the judgment. Upon a favorable judgment for the commission, it shall be entitled to receive reimbursement for any reasonable attorney's fees and other actual related costs. Venue for these actions may be established at the domicile or place of business of the defendant or in the county of the principal office of the commission. The commission may be sued only in the county of its principal office.

71133. Any action by the commission for any violation of this chapter shall be commenced within two years from the date of discovery of the alleged violation. Any action against the commission by any person shall be commenced within two years from the date of the act of which the person complains.

71134. The termination of this chapter shall not affect or waive any right, duty, obligation, or liability that has arisen or that may thereafter arise in connection with this chapter, release or extinguish any violation of this chapter, or affect or impair any right or remedies of the commission with respect to any violation.

71135. (a) Every five years, commencing with the fifth marketing season following the certification pursuant to Section 71104, the secretary shall conduct a referendum among handlers and producers. The operations of the commission shall continue unless the secretary determines from the referendum that a majority of the eligible handlers and a majority of the eligible producers voting in the referendum voted in favor of terminating the operations of this chapter.

(b) If the secretary finds that the vote favors continuation, he or she shall so certify and this chapter shall remain operative. If the secretary finds that the vote favors termination, he or she shall so certify and declare the operation of this chapter and the commission suspended upon the expiration of the then current marketing season. Thereupon, the operations of the commission shall be concluded and funds distributed as provided in Section 71137.

71136. (a) Upon a finding by a two-thirds vote of the membership of the commission that the operation of this chapter has not tended to effectuate its declared purposes, the commission may recommend to the secretary that the operation of this chapter be suspended. However, any suspension shall not become effective until the expiration of the then current marketing season.

(b) Upon the vote of the members of the commission specified in subdivision (a), the secretary shall establish a referendum period, which shall not be less than 10 days or more than 60 days in duration. The secretary may prescribe additional procedures as may be necessary to conduct the referendum. At the close of the established referendum period, the secretary shall tabulate the ballots filed

during the period. The secretary shall suspend the operation of this chapter if he or she finds any of the following has occurred:

(1) Sixty-five percent or more of the handlers who voted in the referendum voted in favor of suspension, and the handlers so voting handled a majority of the total quantity of rice handled in the preceding marketing season by all of the handlers voting in the referendum.

(2) A majority of the handlers who voted in the referendum voted in favor of suspension, and the handlers so voting handled 65 percent or more of the total quantity of rice handled in the preceding marketing season by all of the handlers voting in the referendum.

(3) Sixty-five percent or more of the producers who voted in the referendum voted in favor of suspension, and the producers so voting produced a majority of the total quantity of rice produced in the preceding marketing season by all of the producers voting in the referendum.

(4) A majority of the producers who voted in the referendum voted in favor of suspension, and the producers so voting produced 65 percent or more of the total quantity of rice produced in the preceding marketing season by all of the producers voting in the referendum.

71137. After the effective date of suspension of this chapter, the operation of the commission shall be concluded and all moneys held by the commission not required to defray the expenses of concluding and terminating operations of the commission shall be returned on a pro rata basis to all persons from whom assessments were collected in the immediately preceding marketing season. However, if the commission finds that the amounts returnable are so small as to make impractical the computation and remitting of the prorated refund to these persons, any funds remaining after payment of all expenses of winding up and terminating operations shall be withdrawn from the approved depository and paid into an appropriate state or federal program conducted or used to fund activities related to the subject matter of this chapter. Upon suspension, any intellectual property owned by the commission shall be transferred without charge to the secretary who shall hold the property in trust for the benefit of the California rice industry. The property shall be transferred without charge to any successor program serving purposes similar to the purposes of this chapter.

71138. Upon suspension of the operation of this chapter, the commission shall mail a copy of the notice of suspension to all eligible persons affected by the suspension whose names and addresses are on file.

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 568

An act relating to tourism, and making an appropriation therefor.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. The Legislature finds and declares as follows:

(a) In 1901, fishermen originally from Japan formed a community near San Pedro.

(b) In 1905, they settled on Terminal Island. This was a fishing community, known at the time as Fish Harbor.

(c) The community grew and prospered until it numbered nearly 3,000 Japanese American fishermen, fish-cannery workers, merchants, and residents at its peak.

(d) By the 1930s there were at least eight canneries, commercial and naval shipyards, oil tanks, steamship berths, 60 stores and shops, an elementary school, a Baptist mission, a Shinto shrine and a Buddhist temple.

(e) After the bombing of Pearl Harbor, rumors began to circulate that the village on Fish Harbor was a spy colony, and as a result all people of Japanese descent, including American citizens, were evicted from the island at gunpoint on February 25, 1942.

(f) With only 48 hours notice, the Japanese American residents of Terminal Island were sent to internment camps in a remote and barren mountain area, with only the possessions they could carry with them.

(g) While the residents were imprisoned in internment camps for the next four years, their homes were looted, then bulldozed, their fishing boats were repossessed or stolen, and their fishing nets rotted.

(h) Terminal Island was later turned into a military base, and the fishing village was never rebuilt.

(i) Today, there are still 778 paying members of the Terminal Islanders Club that continue to hold annual reunions around Los Angeles County.

(j) The Japanese American National Museum in Los Angeles held a very popular exhibition in 1994 called "An Island in Time: The

Terminal Island Story," and this exhibition highlighted the Fish Harbor community and the innovations in fishing that the Japanese Americans contributed to the industry.

(k) The California Tourism Policy Act encourages "the preservation and use of California Historic and Scenic environments to enhance the State's appeal as a destination for domestic and international tourism."

SEC. 2. (a) It is the intent of the Legislature that state funds be provided to the Port of Los Angeles for the purpose of assisting in the creation of a Japanese Fishing Village Memorial to be located at Terminal Island.

(b) The sum of one hundred forty-eight thousand dollars ($148,000) is hereby appropriated from the General Fund to the Controller for allocation to the Port of Los Angeles for the purpose of assisting in the creation of a Japanese Fishing Village Memorial to be located at Terminal Island.

CHAPTER 569

An act to amend Section 1831 of the Military and Veterans Code, relating to the POW/MIA Flag.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

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

(a) Thousands of Americans who served our country in military encounters have been captured by the enemy, listed as missing in action, or are unaccounted for and missing.

(b) The uncertainty over the welfare of these Americans has caused their families unimaginable suffering.

(c) As a symbol of California's concern and commitment to a full accounting of all Americans who are still prisoners of war, missing in action, or unaccounted for, the Legislature officially recognizes the flag of the National League of POW/MIA Families.

SEC. 2. Section 1831 of the Military and Veterans Code is amended to read:

1831. (a) So that the people of California will not forget the sacrifices of those members of the United States Armed Forces who, after the termination of hostilities, remain prisoners of war or are missing in action, as well as the sacrifices of missing United States nonmilitary personnel and civilians, the Governor shall annually proclaim the third Friday of September to be known as Prisoner-of-War/Missing-in-Action (POW/MIA) Recognition Day.

(b) The flag of the National League of POW/MIA Families (POW/MIA Flag) is a black and white banner symbolizing those members of the United States Armed Forces who are listed as prisoners of war or missing in action. The flag serves as a powerful reminder to people everywhere of our country's firm resolve to achieve the fullest possible accounting for every member of the United States Armed Forces, and United States nonmilitary personnel and civilians. To the extent it is structurally feasible, the flag shall be flown during business hours, at locations where the United States flag and the California state flag currently fly, over all of the following places on the dates specified in subdivision (c):

(1) All California National Guard armories.

(2) Department of Veterans Affairs.

(3) Military Department.

(4) State Capitol.

(5) All of the headquarters of the following agencies in Sacramento:

(A) Business, Transportation and Housing Agency.

(B) California Environmental Protection Agency.

(C) Health and Welfare Agency.

(D) Office of Child Development and Education.

(E) Resources Agency.

(F) State and Consumer Services Agency.

(G) Trade and Commerce Agency.

(H) Youth and Adult Correctional Agency.

(c) For the purpose of subdivision (b), the POW/MIA Flag shall be flown on the following dates:

(A) Armed Forces Day, the third Saturday in May.

(B) Memorial Day, the last Monday in May.

(C) Flag Day, June 14.

(D) Independence Day, July 4.

(E) National POW/MIA Recognition Day, the third Friday in September.

(F) Veterans Day, November 11.

(2) If June 14, July 4, or November 11 falls upon a Saturday, the flag shall be flown on the preceding Friday. If any of those dates fall upon a Sunday, the flag shall be flown on the following Monday.

(d) The flag shall be flown at the Vietnam Veterans Memorial located on the grounds of the State Capitol whenever the United States flag is flown at that location.

(e) Additionally, the Governor and the Legislature are authorized and requested to issue proclamations calling upon the people, schools, and local governments of California to recognize POW/MIA Recognition Day with appropriate ceremonies and activities.

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CHAPTER 570

An act to add Part 8.5 (commencing with Section 13000) to the Education Code, relating to the California Civil Liberties Public Education Act, and making an appropriation therefor.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. Part 8.5 (commencing with Section 13000) is added to the Education Code, to read:

PART 8.5. THE CALIFORNIA CIVIL LIBERTIES PUBLIC EDUCATION ACT

CHAPTER 1. GENERAL

13000. (a) This part shall be known and may be cited as the California Civil Liberties Public Education Act. The purpose of the California Civil Liberties Public Education Act is to sponsor public educational activities and development of educational materials to ensure that the events surrounding the exclusion, forced removal, and internment of civilians and permanent resident aliens of Japanese ancestry will be remembered, and so that the causes and circumstance of this and similar events may be illuminated and understood.

(b) The Legislature finds and declares that the federal Commission on Wartime Relocation and Internment of Civilians (CWRIC) was established by Congress in 1980 to "review the facts and circumstances surrounding Executive Order 9066, issued in February 19, 1942, and the impact of such Executive Order on American citizens and permanent residents... and to recommend appropriate remedies." The CWRIC issued a report of its findings in 1983 with the reports "Personal Justice Denied" and "Personal Justice Denied-Part II, Recommendations." The reports were based on information gathered "through 20 days of hearings in cities across the country, particularly the West Coast, hearing testimony from more than 750 witnesses: evacuees, former government officials, public figures, interested citizens, and historians and other professionals who have studied the subjects of Commission inquiry."

(c) The lessons to be learned from the internment of Japanese-Americans during World War II are embodied in "Personal Justice Denied-Part II, Recommendations." The CWRIC concluded as follows: "In sum, Executive Order 9066 was not justified by military necessity, and the decisions that followed from it-exclusion, detention, the ending of detention and the ending of exclusion-were

not founded upon military considerations. The broad historical causes that shaped these decisions were race prejudice, war hysteria, and a failure of political leadership. Widespread ignorance about Americans of Japanese descent contributed to a policy conceived in haste and executed in an atmosphere of fear and anger at Japan. A grave personal injustice was done to the American citizens and resident aliens of Japanese ancestry who, without individual review or any probative evidence against them were excluded, removed and detained by the United States during World War II."

(d) The Legislature further finds and declares that President Ronald Reagan signed into law the federal Civil Liberties Act of 1988 and declared during the signing ceremony that "This is a great day for America." In that act the Congress declared as follows:

"The Congress recognizes that, as described in the Commission on Wartime Relocation and Internment of Civilians, a grave injustice was done to both citizens and permanent residents of Japanese ancestry by the evacuation, relocation, and internment of civilians during World War II. As the Commission documents, these actions were carried out without adequate security reasons and without any acts of espionage or sabotage documented by the Commission, and were motivated largely by racial prejudice, wartime hysteria, and a failure of political leadership. The excluded individuals of Japanese ancestry suffered enormous damages, both material and intangible, and there were incalculable loses in education and job training, all of which resulted in significant human suffering for which appropriate compensation has not been made. For these fundamental violations of the basic civil liberties and constitutional rights of these individuals of Japanese ancestry, the Congress apologizes on behalf of the Nation."

CHAPTER 2. CALIFORNIA CIVIL LIBERTIES PUBLIC EDUCATION GRANT PROGRAM

13015. (a) The State Librarian shall allocate grants pursuant to the program established by this part. The grants awarded under the program shall be awarded on a competitive basis.

(b) The State Librarian may contract with independent review panelists and establish an advisory panel to evaluate and make recommendations to the State Librarian based on grant applications.

(c) The State Librarian shall select as grant recipients applicants who meet all of the following criteria:

(1) Applicants demonstrate the capability to, administer and complete the proposed project within specified deadlines and within the specified budget.

(2) Applicants have the experience, knowledge, and qualifications to conduct quality educational activities regarding the exclusion and detention of Japanese-Americans during World War II.

(3) Projects link the Japanese-American exclusion and detention experience with the experiences of other populations so that the cause and circumstances of this and similar violations of civil rights or acts of injustice may be illuminated and understood.

(4) Projects are designed to maximize the long-term educational impact of this chapter.

(5) Projects build upon, contribute to, and expand upon, the existing body of educational and research materials on the exclusion and detention of Japanese-Americans during World War II.

(6) Projects include the variety of experiences regarding the exclusion and detention of Japanese-Americans and its impact before, during, and after, World War II including those Japanese-Americans who served in the military and those who were interned in Department of Justice camps.

(d) Applicants for grants pursuant to this section are encouraged to do each of the following:

(1) Involve former detainees, those excluded from the military area, and their descendants in the development and implementation of projects.

(2) Develop a strategy and plan for raising the level of awareness and understanding among the American public regarding the exclusion and detention of Japanese-Americans during World War II so that the causes and circumstances of this and similar events may be illuminated and understood.

(3) Develop a strategy and plan for reaching the broad, multicultural population through project activities.

(4) Develop local and regional consortia of organizations and individuals engaged in similar educational, research, and development efforts.

(5) Coordinate and collaborate with organizations and individuals engaging in similar educational, research, and development endeavors to maximize the effect of grants.

(6) Utilize creative and innovative methods and approaches in the research, development, and implementation of their projects.

(7) Seek matching funds, in-kind contributions, or other sources of support to supplement their proposal.

(8) Use a variety of media, including new technology, and the arts to creatively and strategically appeal to a broad American public while enhancing and enriching community-based educational efforts.

(9) Include in the grant application scholarly inquiry related to the variety of experiences and impact of the exclusion and detention of persons of Japanese ancestry during World War II, as well as its relationship to the experience of other populations so that the causes, circumstances, lessons, and contemporary applications of this and similar events will be illuminated and understood.

(10) Add relevant materials to or catalogue relevant materials in libraries and other repositories for the creation, publication, and

distribution of bibliographies, curriculum guides, oral histories, and other resource directories and supporting the continued development of scholarly work on this subject by making a broad range of archival, library, and research materials more accessible to the American public.

(e) The State Librarian may adopt other criteria as it deems appropriate for its review of grant proposals. In reviewing projects for funding, scoring shall be based on an evaluation of all application materials: narratives, attachments, support letters, supplementary materials, and other materials that may be requested of applicants.

13020. (a) In the review process, the State Librarian shall assign the following order of priority to the criteria set forth in subdivision (c) of Section 13015:

(1) Criteria set forth in paragraphs (1) to (4), inclusive, shall be given highest priority.

(2) Criteria set forth in paragraphs (5) to (6), inclusive, shall be given second priority.

(b) The State Librarian shall consider the overall breadth and variety of the field of applicants to determine the projects that would best fulfill its program and mission. Final grant awards may be for the full amount of the grant requests or for a portion of the grant request.

(c) Applicants for grants pursuant to this section may include any of the following:

(1) Nonprofit organizations exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code.

(2) Four-year colleges and universities.

(3) Cultural institutions, arts organizations, and community organizations.

(4) Individual artists, writers, journalists, scholars, and educators.

(5) Units of government.

(6) Consortia composed of any of the entities described in paragraphs (1) to (5), inclusive.

(d) Grants allocated pursuant to this section shall be provided for the general purpose of establishing a legacy of remembrance as part of a continuing process of recovery from World War II exclusion and detention and specifically to do one or both of the following:

(1) Educate the public regarding the history and the lessons of the World War II exclusion, removal, and detention of persons of Japanese ancestry through the development, coordination, and distribution of new educational materials and the development of curriculum materials to complement and augment resources currently available on this subject matter.

(2) Develop videos, plays, presentations, speaker bureaus, and exhibitions for presentation to elementary, secondary, and community college audiences.

13025. On or before January 1, 2001, the State Librarian shall report to the Governor and the appropriate fiscal and policy committees of each house of the Legislature on the types of grants

awarded and the accomplishments of the program established pursuant to this part.

13030. It is the intent of the Legislature that the sum of one million dollars ($1,000,000) be annually appropriated for three years from the General Fund to the State Librarian for purposes of this chapter.

SEC. 2. The sum of one million dollars ($1,000,000) appropriated by Item 6110-199-0001 of Section 2.0 of the Budget Act of 1998 is hereby reappropriated to the California State Library for purposes of the California Civil Liberties Public Education Act contained in Part 8.5 (commencing with Section 13000) of the Education Code.

CHAPTER 571

An act to add Sections 7159.1 and 7159.2 to the Business and Professions Code, relating to contracts.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. Section 7159.1 is added to the Business and Professions Code, to read:

7159.1. In any contract for the sale of home improvement goods or services offered by door-to-door sale that contains or is secured by a lien on real property, the contract shall be accompanied by the following notice in 18-point boldfaced type:

"WARNING TO BUYER: IF YOU SIGN THE CONTRACT WHICH ACCOMPANIES THIS NOTICE, YOU WILL BE PUTTING UP YOUR HOME AS SECURITY. THIS MEANS THAT YOUR HOME COULD BE SOLD WITHOUT YOUR PERMISSION AND WITHOUT ANY COURT ACTION IF YOU MISS ANY PAYMENT REQUIRED BY THIS CONTRACT."

This notice shall be written in the same language as the rest of the contract. It shall be on a separate piece of paper from the rest of the contract and shall be signed and dated by the buyer. The home improvement contractor or home improvement salesperson shall deliver to the buyer at the time of the buyer's signing and dating of the notice a legible copy of the signed and dated notice. A security interest created in any contract described in this section that does not provide the notice as required by this section shall be void and unenforceable.

This section shall not apply to any of the following:

(a) Any contract that is subject to Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of the Civil Code.

(b) A mechanic's lien established pursuant to Chapter 2 (commencing with Section 3109) of Title 15 of Part 4 of Division 3 of the Civil Code.

(c) Any contract that is subject to subdivision (a) of Section 7159.2.

SEC. 2. Section 7159.2 is added to the Business and Professions Code, to read:

7159.2. (a) No home improvement goods or services contract of a value of five thousand dollars ($5,000) or less shall provide for a security interest in real property, except for a mechanic's lien or other interest in property that arises by operation of law. Any lien in violation of this subdivision is void and unenforceable.

(b) When the proceeds of a loan secured by a mortgage on real property are used to fund goods or services pursuant to a home improvement goods or services contract of more than five thousand dollars ($5,000), the person or entity making the loan shall only pay a contractor under the home improvement goods or services contract from the proceeds of the loan by either of the following methods:

(1) By an instrument payable to the borrower or jointly to the borrower and the contractor.

(2) At the election of the borrower, through a third-party escrow agent pursuant to the terms of a written agreement signed by the borrower, the person or entity making the loan, and the contractor prior to the disbursement.

CHAPTER 572

An act to amend Section 366.26 of the Welfare and Institutions Code, relating to juvenile placement determinations.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. 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 may present, and then shall make findings and orders in the following order of preference:

(1) 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) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 90 days.

(3) Appoint a legal guardian for the child and order that letters of guardianship issue.

(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) The court shall conduct the hearing as follows:

(1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a pre-adoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months, 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 under Section 366.21 or 366.22 that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court

finds that termination of parental rights would be detrimental to the child because of one or more 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 siblings are, or should be, permanently placed together.

If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B), (C), or (D), it shall state its reasons in writing or on the record.

(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 within 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 best interests 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 that 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 that 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.

CHAPTER 573

An act to amend Sections 52291, 52292, 52296, 52323, 52324, and 52325 of, to repeal Sections 52293 and 52294 of, and to repeal and add Chapter 3 (commencing with Section 52651) of Division 18 of, the Food and Agricultural Code, relating to agriculture, and making an appropriation therefor.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. Section 52291 of the Food and Agricultural Code is amended to read:

52291. There is in the department a Seed Advisory Board consisting of 11 members appointed by the secretary, nine of whom shall be labelers registered under the provisions of this chapter and two of whom shall be members of the public. The members of the board who are labelers registered under the provisions of this chapter shall be representative of the functions of seed production, conditioning, marketing, or utilization.

SEC. 2. Section 52292 of the Food and Agricultural Code is amended to read:

52292. The term of office for each member of the board is three years. Vacancies shall be filled by the secretary for an unexpired term.

SEC. 3. Section 52293 of the Food and Agricultural Code is repealed.

SEC. 4. Section 52294 of the Food and Agricultural Code is repealed.

SEC. 5. Section 52296 of the Food and Agricultural Code is amended to read:

52296. The board shall be advisory to the secretary and may make recommendations on all matters pertaining to this chapter including, but not limited to, seed law and regulations, enforcement, seed laboratory diagnostics and annual budgets required to accomplish the purposes of this chapter. The board shall be advisory as to the scope of the program funded by industry and recommend the dollar volume assessments, which, when combined with the registration fee required by this chapter, shall provide adequate funds to support the program.

SEC. 6. Section 52323 of the Food and Agricultural Code is amended to read:

52323. The department's cost of carrying out this chapter shall be funded from money that is received by the secretary pursuant to this chapter. The secretary shall also pay annually, in arrears, 30 percent of the total assessment received pursuant to Section 52354 up to one hundred twenty thousand dollars ($120,000), to counties as an annual subvention for costs incurred in the enforcement of this chapter. The department's costs of administering this chapter shall be paid before allocating funds to the counties under this section.

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

52324. The subvention program under Section 52323 is an optional program available to counties. The subvention to counties under Section 52323 shall be annually apportioned as follows:

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

(b) Counties with registered seed labeler operations shall receive subventions based upon units of enforcement activity generated by the registered seed labeler operations within the county and upon the performance of enforcement activities necessary to carry out this chapter. The units of activity shall be determined by the secretary, taking into consideration the number of lots and kinds of seed labeled by each registered seed labeler operation within the county. The rate per unit of activity shall be established by dividing the total statewide units of activity into the annual funds available to the counties under Section 52323 after deducting the amount required for subventions in subdivision (a). Apportionment to individual counties shall be based upon the county's total units of activity performed times the established rate. In no case shall a county receive less than one hundred dollars ($100).

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

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

(b) The secretary, upon recommendation of the board or upon the secretary's own initiative, may withhold a portion of the funds designated to a county pursuant to subdivision (b) of Section 52324 if that county fails to meet the performance standards established by the secretary and set forth in the cooperative agreement with that county.

(c) The secretary shall provide a written justification to the board for any action taken by the secretary that does not fully implement a recommendation made by the board pursuant to subdivision (b).

(d) 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. 9. Chapter 3 (commencing with Section 52651) of Division 18 of the Food and Agricultural Code is repealed.

SEC. 10. Chapter 3 (commencing with Section 52651) is added to Division 18 of the Food and Agricultural Code, to read:

CHAPTER 3. SEED POTATO CERTIFICATION

Article 1. Seed Potato Certification Agencies

52651. The secretary may, by regulation, designate as a seed potato certification agency, any person or agency that the secretary finds is qualified to certify seed potatoes as to their variety, quality, and freedom from pests and diseases. The secretary shall consult with the University of California and representatives of the seed potato industry of California before approving the qualifications of any seed potato certification agency.

CHAPTER 574

An act to add Section 58565 to the Food and Agricultural Code, relating to foreign marketing, and making an appropriation therefor.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. Section 58565 is added to the Food and Agricultural Code, to read:

58565. The department shall direct a portion of any additional funding, in excess of the original appropriation for purposes of this act, to be used for all of the following purposes:

(a) To conduct agricultural market research, including trends in California agricultural industry and trends in foreign agricultural

markets. The agricultural market research shall be utilized to determine viable opportunities to export California agricultural products successfully to foreign markets.

(b) To conduct personnel training, including the training of California foreign trade office personnel.

(c) To perform existing duties of the department under this chapter.

SEC. 2. The sum of one hundred thirty-five thousand dollars ($135,000) is hereby appropriated from the General Fund to the Department of Food and Agriculture for the purpose of conducting foreign market research, conducting personnel training, and performing other existing duties of the department, as provided in Section 58565 of the Food and Agricultural Code.

CHAPTER 575

An act to amend Sections 76229, 76230, 76233, 76311, 76341, 76382.6, and 76383 of, and to repeal and add Sections 76381 and 76382 of, the Food and Agricultural Code, relating to agriculture.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. Section 76229 of the Food and Agricultural Code is amended to read:

76229. "Marketing year" means the period beginning on the date that the secretary certifies the favorable vote of producers pursuant to Section 76315 and ending the day immediately preceding that date the following year.

SEC. 2. Section 76230 of the Food and Agricultural Code is amended to read:

76230. "Producer" means any person in this state who raises, breeds, grows, or feeds sheep, and markets, or causes to be marketed, the wool derived therefrom and who, upon request, provides proof of commodity sale during the preceding marketing season. "Producer" does not include any person who markets 100 pounds or less of wool in the preceding marketing year.

SEC. 3. Section 76233 of the Food and Agricultural Code is amended to read:

76233. "Wool" means the shorn fiber of live sheep in the grease basis, including wool tags in the natural state before cleaning or scouring.

SEC. 4. Section 76311 of the Food and Agricultural Code is amended to read:

76311. (a) Not later than April 1, 1999, or as soon thereafter as possible, the secretary shall establish a list of producers eligible to vote on implementation of this chapter. In establishing the list, the secretary may require that handlers, producers, and others submit the names and mailing addresses of all producers. The secretary also may require that the information provided include the quantity of wool produced by each producer or, in the alternative, may establish procedures for receiving the information at the time of the referendum vote specified in Section 76312. The request for the information shall be in writing. The information shall be filed within 30 days following receipt of the written request.

(b) Any producer whose name does not appear on the secretary's list may have his or her name established on the list by filing with the secretary a signed statement, identifying himself or herself as a producer. Failure to be on the list does not exempt the producer from paying assessments.

(c) Prior to the certification of a favorable vote as provided in Section 76315, the secretary shall allow producers to view the list of names of producers created pursuant to subdivision (a). The list shall be viewed only at the department and shall not be photocopied.

SEC. 5. Section 76341 of the Food and Agricultural Code is amended to read:

76341. (a) The commission shall, not later than January 1 of each year, or as soon thereafter as possible, establish the assessment for the following marketing year.

(b) The assessment for the first marketing year shall be six cents ($0.06) per pound on all wool marketed by producers.

(c) For the second and subsequent marketing years, the assessment shall not exceed eight cents ($0.08) per pound on all wool marketed by producers, as determined by the commission, unless a greater fee is approved by producers pursuant to the procedures specified in Section 76381.

(d) The assessment rate shall not be increased by more than one-half of one cent ($0.005) each marketing year.

(e) A fee greater than twelve cents ($0.12) per pound may not be charged unless that fee is approved by the Legislature by statute.

(f) Assessments provided for in this section shall be upon the producer. The handler shall deduct the assessment from amounts paid by him or her to the producer and shall be a trustee of those funds until they are paid to the commission at the time and in the manner prescribed by the commission.

SEC. 6. Section 76381 of the Food and Agricultural Code is repealed.

SEC. 7. Section 76381 is added to the Food and Agricultural Code, to read:

76381. (a) Every five years, commencing with the 2004–05 marketing year, the secretary shall hold a hearing to determine whether the operation of this chapter shall be continued in effect. If

the secretary finds, following the hearing, that a substantial question exists among producers assessed under this chapter as to whether the operation of this chapter shall be continued in effect, the secretary shall conduct a referendum vote among producers to determine whether the operation of this chapter shall be approved and continued in effect. A favorable vote under this section shall be found if the secretary determines from the referendum that a majority of the eligible producers voting in the referendum voted in favor of continuing the operations of this chapter.

(b) If the secretary finds, following the referendum vote, that a favorable vote has been given as provided in subdivision (a), the secretary shall so certify and this chapter shall remain in operation. If the secretary finds that a favorable vote has not been given as provided in subdivision (a), the secretary shall so certify and declare the operation of this chapter and the commission suspended upon expiration of the then current marketing year. At that time, the operations of the commission shall be concluded and funds distributed in the manner provided in Section 76383.

SEC. 8. Section 76382 of the Food and Agricultural Code is repealed.

SEC. 9. Section 76382 is added to the Food and Agricultural Code, to read:

76382. If a petition is filed as provided in Section 76382.5, the secretary shall hold a hearing pursuant to Section 76381 prior to conducting the referendum authorized by Section 76382.5.

SEC. 10. Section 76382.6 of the Food and Agricultural Code is amended to read:

76382.6. The secretary shall terminate the commission at the end of the current marketing year if the secretary finds that the termination of the commission is requested in writing, within a 90-day period, by at least 51 percent of the eligible producers that are directly affected that produce at least 51 percent of the volume of the product.

The person or persons originating the request shall file a written notice with the secretary in a manner that establishes the date the request is initiated. Any person may withdraw his or her name from the petition requesting the termination prior to the time the request is presented to the secretary.

The signatures to the petition requesting the termination need not all be appended to one sheet of paper. Each person signing the petition shall add to his or her signature his or her place of business, giving street and number. If no street and number exist, then a designation of the place of business shall be given which will enable the location to be readily ascertained.

The petition shall bear a copy of the notice of intention. Signatures shall be secured within the time limit specified in this section.

SEC. 11. Section 76383 of the Food and Agricultural Code is amended to read:

76383. After the effective date of suspension of the operation of this chapter, the operation of the commission shall be concluded and any and all funds remaining held by the commission, collected by assessment and not required to defray the expenses of concluding and terminating operations of the commission, shall be returned upon a pro rata basis to all persons from whom assessments were collected in the immediately preceding marketing year. However, if the commission finds that the amounts so returnable are so small as to make impractical the computation and remitting of the prorate refund to these persons, any funds remaining after payment of all expenses of winding up and terminating operations shall be withdrawn from the approved depository and paid into an appropriate program conducted by the University of California or the California State University system, another state agency, or a federal agency that deals with the purposes of this chapter. If no program exists, the funds shall be paid into the State Treasury as unclaimed trust funds.

CHAPTER 576

An act to amend Sections 6981, 6982, 6983, 6986, 6987, 6988, and 6989 of the Food and Agricultural Code, relating to agriculture, and making an appropriation therefor.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. Section 6981 of the Food and Agricultural Code is amended to read:

6981. (a) An annual assessment of 1 percent shall be levied on the gross sales of all deciduous pome and stone fruit trees, nut trees, and grapevines, including seeds, seedlings, rootstocks, and topstock, including ornamental varieties of apple, apricot, crabapple, cherry, nectarine, peach, pear, and plum, produced and sold within the state or produced within and shipped from the state by any licensed nursery dealer. For packaged or containerized stock, the assessment shall be levied on the producer's bareroot price of the plants.

(b) The secretary, as appropriate, and on the recommendation of the board established pursuant to Section 6988, may exempt from the assessment certain species of pome and stone fruit, nut trees, grapevines, or ornamental varieties of apple, apricot, crabapple, cherry, nectarine, peach, pear, and plum if it can be demonstrated that no benefit is derived by these species from programs described in subdivision (d).

(c) The assessment shall be applied at the point of sale where the nursery stock is sold by a producer to persons other than California producers of nursery stock that is subject to assessment under subdivision (a).

(d) The secretary may set the assessment at a lower percent to cover the costs necessary to implement and carry out all department programs established pursuant to Article 7 (commencing with Section 5821) of Chapter 8 of Part 1 concerning the registration and certification of pome and stone fruit trees, nut trees, and grapevines; the University of California foundation plant materials service activities concerning pome and stone fruit trees, nut trees, and grapevines; and other activities related to the development of planting materials for pome and stone fruit trees, nut trees, and grapevines.

SEC. 2. Section 6982 of the Food and Agricultural Code is amended to read:

6982. The assessment shall be due and payable to the secretary annually by March 10. Assessments not paid within 30 days of the due date shall be considered delinquent.

SEC. 3. Section 6983 of the Food and Agricultural Code is amended to read:

6983. (a) The measure of gross sales shall be the gross sales for the previous fiscal year of each licensee.

(b) The secretary may conduct audits and ensure that an assessment is being properly paid.

SEC. 4. Section 6986 of the Food and Agricultural Code is amended to read:

6986. The secretary shall levy on all delinquent and unpaid assessments pursuant to this article a collection charge of 20 percent of the amount due.

SEC. 5. Section 6987 of the Food and Agricultural Code is amended to read:

6987. The secretary shall not renew a nursery license to any applicant who has failed to pay an assessment due pursuant to this article within 60 days of the due date.

SEC. 6. Section 6988 of the Food and Agricultural Code is amended to read:

6988. The secretary, upon consultation with the pome and stone fruit tree, nut tree, and grapevine nursery industry, shall appoint a board to assist and advise him or her concerning the implementation of this article.

(a) Membership on the board shall consist of 11 representatives, a majority of whom are licensed producers of pome, stone, nut, and grape nursery stock, but also users and a public member as follows:

(1) Two each from the stone fruit (including almonds), pome fruit, and nut (other than almond) industries.

(2) Four from the grape industry.

(3) One public representative.

(b) Board members shall represent all areas of the state involved in the production of pome and stone fruit trees, nut trees, and grapevines.

(c) The members of the board shall serve for a term of two years. The secretary, upon nomination by the industry, may appoint a member for three consecutive terms. Every two years, the secretary shall reappoint no more than eight of the then-current members of the board.

(d) The board shall meet at least twice a year. The chair or the secretary may call any other meeting when it is deemed necessary by one or both of them. Each member shall be allowed per diem and mileage in accordance with Department of Personnel Administration rules for attending any meeting of the board.

(e) The board shall review and make recommendations to the secretary concerning the ongoing operations of the department and the University of California pertaining to this article. This shall include advice on fiscal expenditure, assessments needed to cover costs, and proposals concerning the development of planting materials.

SEC. 7. Section 6989 of the Food and Agricultural Code is amended to read:

6989. 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 on or before January 1, 2004, deletes or extends that date.

CHAPTER 577

An act to amend Sections 15339.1, 15339.2, and 15339.3 of, and to amend the heading of Article 3.2 (commencing with Section 15339.1) of Chapter 1 of Part 6.7 of Division 3 of Title 2 of, the Government Code, relating to economic development.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. The heading of Article 3.2 (commencing with Section 15339.1) of Chapter 1 of Part 6.7 of Division 3 of Title 2 of the Government Code is amended to read:

Article 3.2. Business Incubation Program

SEC. 2. Section 15339.1 of the Government Code is amended to read:

15339.1. This article shall be known and may be cited as the Business Incubation Program Act.

SEC. 3. Section 15339.2 of the Government Code is amended to read:

15339.2. For purposes of this chapter, the following definitions apply:

(a) "Incubator" means an entity that facilitates the formation and growth of new small businesses to increase their probability of success through the provision or sharing of needed equipment, services, and facilities, including at least five of the following:

(1) Reception and meeting areas.

(2) Secretarial services.

(3) Accounting and bookkeeping services.

(4) Research libraries.

(5) Onsite financial, management, and technical counseling.

(6) Flexible lease arrangements for business sites or for necessary equipment.

(7) Computer and word processing services.

(8) Office furniture rentals.

(9) Management and entrepreneurial training programs that have an entry and exit policy.

(10) Provision or arrangement of debt or equity financing.

(b) "Office" means the Office of Small Business within the Trade and Commerce Agency.

SEC. 4. Section 15339.3 of the Government Code is amended to read:

15339.3. (a) The Office of Small Business shall award grants to California nonprofit corporations or public agencies pursuant to the application process described in this section.

(b) In developing the applications for grants, the office shall consult with incubators and other interested parties to ensure that the application is understandable and is disseminated as widely as possible.

(c) Grant funds shall be encumbered no later than one year from the date they become available to the agency for this purpose.

(d) The grants shall be awarded to the proposals scoring the highest points, based upon criteria that shall include the following:

(1) Priority shall be given to proposals that provide maximum debt or equity funding to small businesses that receive services pursuant to Section 15339.2 from a California incubator. The office shall give consideration to applicants that leverage the state funds with funds from other sources used to provide funding to the incubator businesses.

(2) Consideration shall also be given to proposals that enable the formation and development of incubators.

(e) Grant awardees shall provide the office with suitable financial records to ensure their financial viability, and after receiving the grant, shall allow the office to audit the records of the expenditure of grant funds.

(f) Notwithstanding Section 7550.5, the Office of Small Business shall evaluate the Business Incubation Program and present its findings to the Legislature on a biennial basis, commencing January 1, 2000. This evaluation shall include, but shall not be limited to, identifying the number of applicants for available grants, the number of incubators assisted through the program, the number of small businesses assisted, the graduation rate of businesses out of incubators, and the number of jobs created and their mean wage level, and identifying the four-digit Standard Industrial Classification (SIC) code for businesses in incubators partially financed by the office. The evaluation shall be completed within the existing resources of the office.

CHAPTER 578

An act to add Section 1569.156 to the Health and Safety Code, relating to care facilities.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. (a) It is the intent of the Legislature that individuals in California be informed about their right to make decisions concerning their medical care and ability to formulate advance directives.

(b) The Legislature finds and declares that residents of residential care facilities for the elderly will benefit from being informed about advance directives.

SEC. 2. Section 1569.156 is added to the Health and Safety Code, to read:

1569.156. (a) A residential care facility for the elderly shall do all of the following:

(1) Not condition the provision of care or otherwise discriminate based on whether or not an individual has executed an advance directive, consistent with applicable laws and regulations.

(2) Provide education to staff on issues concerning advance directives.

(3) Provide written information, upon admission, about the right to make decisions concerning medical care, including the right to accept or refuse medical or surgical treatment and the right, under state law, to formulate advance directives.

(4) Provide written information about policies of the facility regarding the implementation of the rights described in paragraph (3).

(b) For purposes of this section, "advance directive" means instructions relating to the provision of health care when individuals are unable to communicate their wishes regarding medical treatment. The "advance directive" may be a written document authorizing an agent or surrogate to make decisions on an individual's behalf, including a durable power of attorney for health care, as defined in Section 4700 of the Probate Code, a written statement such as a declaration, as defined in Section 7186.5, or some other form of instruction recognized under state law specifically addressing the provision of health care.

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 579

An act to add Chapter 13.6 (commencing with Section 25989.1) to Division 20 of the Health and Safety Code, relating to performing animals.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. The Legislature finds and declares that this act addresses a matter of critical importance and concern with respect to protecting the public health and safety, as well as ensuring the humane treatment of, wild or domestic animals used in commercial enterprises.

SEC. 2. Chapter 13.6 (commencing with Section 25989.1) is added to Division 20 of the Health and Safety Code, to read:

CHAPTER 13.6. WILD OR DOMESTIC ANIMALS IN TRAVELING CIRCUSES AND CARNIVALS

25989.1. (a) Any traveling circus or carnival that performs in California, shall do both of the following:

(1) Notify each entity that provides animal control services for a city, county, or city and county in which the traveling circus or carnival intends to perform of its intent to perform within that jurisdiction. Notice shall be given at least 14 days prior to the first performance in that city, county, or city and county.

(2) Provide each entity that provides animal control services for a city, county, or city and county in which the traveling circus or carnival intends to perform with a schedule of its performances in California.

(b) For the purposes of this chapter, "traveling circus or carnival" does not include any fair regulated under Chapter 4 (commencing with Section 19400) of Division 8 of the Business and Professions Code, or any rodeo, horse, or school event.

(c) Any violation of subdivision (a) shall be punishable by a fine of not less than five hundred dollars ($500) and not more than two thousand dollars ($2,000) for a first violation, and not less than one thousand five hundred dollars ($1,500) nor more than five thousand dollars ($5,000) for any subsequent violation.

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 580

An act to amend Section 1758 of the Business and Professions Code, relating to dental hygienists.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. Section 1758 of the Business and Professions Code is amended to read:

1758. The board shall license as a registered dental hygienist a person who satisfies all of the following requirements:

(a) Completion of an educational program for registered dental hygienists, approved by the board, and accredited by the

Commission on Dental Accreditation, and conducted by a degree-granting, post-secondary institution.

(b) Satisfactory performance on an examination required by the board.

(c) Satisfactory completion of a national written dental hygiene examination approved by the board.

CHAPTER 581

An act to amend Sections 366.2, 527.6, and 527.8 of the Code of Civil Procedure, to amend Sections 2020, 2101, 2103, 2104, 2105, 2106, 2110, 2330, 2330.1, 2336, 2337, 4055, 6203, 6380, and 7541 of the Family Code, and to amend Sections 810, 811, 1826, 2620, 2640, 8250, and 8271 of the Probate Code, relating to civil proceedings.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. Section 366.2 of the Code of Civil Procedure is amended to read:

366.2. (a) If a person against whom an action may be brought on a liability of the person, whether arising in contract, tort, or otherwise, and whether accrued or not accrued, dies before the expiration of the applicable limitations period, and the cause of action survives, an action may be commenced within one year after the date of death, and the limitations period that would have been applicable does not apply.

(b) The limitations period provided in this section for commencement of an action shall not be tolled or extended for any reason except as provided in any of the following, where applicable:

(1) Part 4 (commencing with Section 9000) of Division 7 of the Probate Code (creditor claims in administration of estates of decedents).

(2) Part 8 (commencing with Section 19000) of Division 9 of the Probate Code (payment of claims, debts, and expenses from revocable trust of deceased settlor).

(3) Part 3 (commencing with Section 21300) of Division 11 of the Probate Code (no contest clauses).

(c) This section applies to actions brought on liabilities of persons dying on or after January 1, 1993.

SEC. 2. Section 527.6 of the Code of Civil Procedure is amended to read:

527.6. (a) A person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order and an injunction prohibiting harassment as provided in this section.

(b) For the purposes of this section, "harassment" is unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the plaintiff.

As used in this subdivision:

(1) "Unlawful violence" is any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but shall not include lawful acts of self-defense or defense of others.

(2) "Credible threat of violence" is a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose.

(3) "Course of conduct" is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an individual, making harassing telephone calls to an individual, or sending harassing correspondence to an individual by any means including, but not limited to, the use of public or private mails, interoffice mail, fax, or computer e-mail. Constitutionally protected activity is not included within the meaning of "course of conduct."

(c) Upon filing a petition for an injunction under this section, the plaintiff may obtain a temporary restraining order in accordance with Section 527, except to the extent this section provides a rule that is inconsistent. A temporary restraining order may be issued with or without notice upon an affidavit that, to the satisfaction of the court, shows reasonable proof of harassment of the plaintiff by the defendant, and that great or irreparable harm would result to the plaintiff. In the discretion of the court, and on a showing of good cause, a temporary restraining order issued under this section may include other named family or household members who reside with the plaintiff. A temporary restraining order issued under this section shall remain in effect, at the court's discretion, for a period not to exceed 15 days, or, if the court extends the time for hearing under subdivision (d), not to exceed 22 days, unless otherwise modified or terminated by the court.

(d) Within 15 days, or, if good cause appears to the court, 22 days, from the date the temporary restraining order is issued, a hearing shall be held on the petition for the injunction. The defendant may file a response that explains, excuses, justifies, or denies the alleged harassment or may file a cross-complaint under this section. At the hearing, the judge shall receive any testimony that is relevant, and may make an independent inquiry. If the judge finds by clear and convincing evidence that unlawful harassment exists, an injunction shall issue prohibiting the harassment. An injunction issued pursuant to this section shall have a duration of not more than three years. At

any time within the three months before the expiration of the injunction, the plaintiff may apply for a renewal of the injunction by filing a new petition for an injunction under this section.

(e) Nothing in this section shall preclude either party from representation by private counsel or from appearing on the party's own behalf.

(f) In a proceeding under this section where there are allegations or threats of domestic violence, a support person may accompany a party in court and, where the party is not represented by an attorney, may sit with the party at the table that is generally reserved for the party and the party's attorney. The support person is present to provide moral and emotional support for a person who alleges he or she is a victim of domestic violence. The support person is not present as a legal adviser and shall not give legal advice. The support person shall assist the person who alleges he or she is a victim of domestic violence in feeling more confident that he or she will not be injured or threatened by the other party during the proceedings where the person who alleges he or she is a victim of domestic violence and the other party must be present in close proximity. Nothing in this subdivision precludes the court from exercising its discretion to remove the support person from the courtroom if the court believes the support person is prompting, swaying, or influencing the party assisted by the support person.

(g) Upon filing of a petition for an injunction under this section, the defendant shall be personally served with a copy of the petition, temporary restraining order, if any, and notice of hearing of the petition. Service shall be made at least five days before the hearing. The court may for good cause, on motion of the plaintiff or on its own motion, shorten the time for service on the defendant.

(h) The court shall order the plaintiff or the attorney for the plaintiff to deliver a copy of each temporary restraining order or injunction, or modification or termination thereof, granted under this section, by the close of the business day on which the order was granted, to the law enforcement agencies within the court's discretion as are requested by the plaintiff. Each appropriate law enforcement agency shall make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported harassment.

An order issued under this section shall, on request of the plaintiff, be served on the defendant, whether or not the defendant has been taken into custody, by any law enforcement officer who is present at the scene of reported harassment involving the parties to the proceeding. The plaintiff shall provide the officer with an endorsed copy of the order and a proof of service that the officer shall complete and send to the issuing court.

Upon receiving information at the scene of an incident of harassment that a protective order has been issued under this section, or that a person who has been taken into custody is the subject of an

order, if the protected person cannot produce a certified copy of the order, a law enforcement officer shall immediately attempt to verify the existence of the order.

If the law enforcement officer determines that a protective order has been issued, but not served, the officer shall immediately notify the defendant of the terms of the order and shall at that time also enforce the order. Verbal notice of the terms of the order shall constitute service of the order and is sufficient notice for the purposes of this section and for the purposes of Section 273.6 and subdivision (g) of Section 12021 of the Penal Code.

(i) The prevailing party in any action brought under this section may be awarded court costs and attorney's fees, if any.

(j) Any willful disobedience of any temporary restraining order or injunction granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

(k) This section does not apply to any action or proceeding covered by Title 1.6C (commencing with Section 1788) of the Civil Code or by Division 10 (commencing with Section 6200) of the Family Code. Nothing in this section shall preclude a plaintiff's right to use other existing civil remedies.

(*l*) The Judicial Council shall promulgate forms and instructions therefor, and rules for service of process, scheduling of hearings, and any other matters required by this section. The petition and response forms shall be simple and concise.

SEC. 3. Section 527.8 of the Code of Civil Procedure is amended to read:

527.8. (a) Any employer, whose employee has suffered unlawful violence or a credible threat of violence from any individual, that can reasonably be construed to be carried out or to have been carried out at the workplace, may seek a temporary restraining order and an injunction on behalf of the employee prohibiting further unlawful violence or threats of violence by that individual.

(b) For the purposes of this section:

(1) "Unlawful violence" is any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but shall not include lawful acts of self-defense or defense of others.

(2) "Credible threat of violence" is a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose.

(3) "Course of conduct" is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an employee to or from the place of work; entering the workplace; following an employee during hours of employment; making telephone calls to an employee; or sending correspondence to an employee by any means, including, but not limited to, the use of the public or private mails, interoffice mail, fax, or computer e-mail.

(c) Nothing in this section shall be construed to permit a court to issue a temporary restraining order or injunction prohibiting speech or other activities that are constitutionally protected, or otherwise protected by Section 527.3 or any other provision of law.

(d) For purposes of this section, the terms "employer" and "employee" mean persons defined in Section 350 of the Labor Code. The term "employer" also includes a federal agency, the state, a state agency, a city, county, or district, and a private, public, or quasi-public corporation, or any public agency thereof or therein. The term "employee" also includes the members of boards of directors of private, public, and quasi-public corporations and elected and appointed public officers. For purposes of this section only, the term "employee" also includes a volunteer or independent contractor who performs services for the employer at the employer's worksite.

(e) Upon filing a petition for an injunction under this section, the plaintiff may obtain a temporary restraining order in accordance with subdivision (a) of Section 527, if the plaintiff also files an affidavit that, to the satisfaction of the court, shows reasonable proof that an employee has suffered unlawful violence or a credible threat of violence by the defendant, and that great or irreparable harm would result to an employee. In the discretion of the court, and on a showing of good cause, a temporary restraining order issued under this section may include other named family or household members who reside with the employee.

A temporary restraining order granted under this section shall remain in effect, at the court's discretion, for a period not to exceed 15 days, unless otherwise modified or terminated by the court.

(f) Within 15 days of the filing of the petition, a hearing shall be held on the petition for the injunction. The defendant may file a response that explains, excuses, justifies, or denies the alleged unlawful violence or credible threats of violence or may file a cross-complaint under this section. At the hearing, the judge shall receive any testimony that is relevant and may make an independent inquiry. Moreover, if the defendant is a current employee of the entity requesting the injunction, the judge shall receive evidence concerning the employer's decision to retain, terminate, or otherwise discipline the defendant. If the judge finds by clear and convincing evidence that the defendant engaged in unlawful violence or made a credible threat of violence, an injunction shall issue prohibiting further unlawful violence or threats of violence. An injunction issued pursuant to this section shall have a duration of not more than three years. At any time within the three months before the expiration of the injunction, the plaintiff may apply for a renewal of the injunction by filing a new petition for an injunction under this section.

(g) Nothing in this section shall preclude either party from representation by private counsel or from appearing on his or her own behalf.

(h) Upon filing of a petition for an injunction under this section, the defendant shall be personally served with a copy of the petition, temporary restraining order, if any, and notice of hearing of the petition. Service shall be made at least five days before the hearing. The court may, for good cause, on motion of the plaintiff or on its own motion, shorten the time for service on the defendant.

(i) The court shall order the plaintiff or the attorney for the plaintiff to deliver a copy of each temporary restraining order or injunction, or modification or termination thereof, granted under this section, by the close of the business day on which the order was granted, to the law enforcement agencies within the court's discretion as are requested by the plaintiff. Each appropriate law enforcement agency shall make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported unlawful violence or a credible threat of violence.

(j) Any intentional disobedience of any temporary restraining order or injunction granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

(k) Nothing in this section shall be construed as expanding, diminishing, altering, or modifying the duty, if any, of an employer to provide a safe workplace for employees and other persons.

(*l*) The Judicial Council shall develop forms, instructions, and rules for scheduling of hearings and other procedures established pursuant to this section. The forms for the petition and response shall be simple and concise.

SEC. 4. Section 2020 of the Family Code is amended to read:

2020. A responsive pleading, if any, shall be filed and a copy served on the petitioner within 30 days of the date of the service on the respondent of a copy of the petition and summons.

SEC. 5. Section 2101 of the Family Code is amended to read:

2101. Unless the provision or context otherwise requires, the following definitions apply to this chapter:

(a) "Asset" includes, but is not limited to, any real or personal property of any nature, whether tangible or intangible, and whether currently existing or contingent.

(b) "Default judgment" does not include a stipulated judgment or any judgment pursuant to a marital settlement agreement.

(c) "Earnings and accumulations" includes income from whatever source derived, as provided in Section 4058.

(d) "Expenses" includes, but is not limited to, all personal living expenses, but does not include business related expenses.

(e) "Income and expense declaration" includes the Income and Expense Declaration forms approved for use by the Judicial Council, and any other financial statement that is approved for use by the Judicial Council in lieu of the Income and Expense Declaration, if the financial statement form satisfies all other applicable criteria.

(f) "Liability" includes, but is not limited to, any debt or obligation, whether currently existing or contingent.

SEC. 6. Section 2103 of the Family Code is amended to read:

2103. In order to provide full and accurate disclosure of all assets and liabilities in which one or both parties may have an interest, each party to a proceeding for dissolution of the marriage or legal separation of the parties shall serve on the other party a preliminary declaration of disclosure under Section 2104 and a final declaration of disclosure under Section 2105, unless service of the final declaration of disclosure is waived pursuant to Section 2105 or 2110, and shall file proof of service of each with the court.

SEC. 7. Section 2104 of the Family Code is amended to read:

2104. (a) After or concurrently with service of the petition for dissolution or nullity of marriage or legal separation of the parties, each party shall serve on the other party a preliminary declaration of disclosure, executed under penalty of perjury on a form prescribed by the Judicial Council. The commission of perjury on the preliminary declaration of disclosure may be grounds for setting aside the judgment, or any part or parts thereof, pursuant to Chapter 10 (commencing with Section 2120), in addition to any and all other remedies, civil or criminal, that otherwise are available under law for the commission of perjury.

(b) The preliminary declaration of disclosure shall not be filed with the court, except on court order; however, the parties shall file proof of service of the preliminary declaration of disclosure with the court.

(c) The preliminary declaration of disclosure shall set forth with sufficient particularity, that a person of reasonable and ordinary intelligence can ascertain, all of the following:

(1) The identity of all assets in which the declarant has or may have an interest and all liabilities for which the declarant is or may be liable, regardless of the characterization of the asset or liability as community, quasi-community, or separate.

(2) The declarant's percentage of ownership in each asset and percentage of obligation for each liability where property is not solely owned by one or both of the parties. The preliminary declaration may also set forth the declarant's characterization of each asset or liability.

(d) A declarant may amend his or her preliminary declaration of disclosure without leave of the court. Proof of service of any amendment shall be filed with the court.

(e) Along with the preliminary declaration of disclosure, each party shall provide the other party with a completed income and expense declaration unless an income and expense declaration has already been provided and is current and valid.

SEC. 8. Section 2105 of the Family Code is amended to read:

2105. (a) Except by court order for good cause or as provided in subdivision (c), before or at the time the parties enter into an agreement for the resolution of property or support issues other than

pendente lite support, or, if the case goes to trial, no later than 45 days before the first assigned trial date, each party, or the attorney for the party in this matter, shall serve on the other party a final declaration of disclosure and a current income and expense declaration, executed under penalty of perjury on a form prescribed by the Judicial Council. The commission of perjury on the final declaration of disclosure may be grounds for setting aside the judgment, or any part or parts thereof, pursuant to Chapter 10 (commencing with Section 2120), in addition to any and all other remedies, civil or criminal, that otherwise are available under law for the commission of perjury.

(b) The final declaration of disclosure shall include all of the following information:

(1) All material facts and information regarding the characterization of all assets and liabilities.

(2) All material facts and information regarding the valuation of all assets that are contended to be community property or in which it is contended the community has an interest.

(3) All material facts and information regarding the amounts of all obligations that are contended to be community obligations or for which it is contended the community has liability.

(4) All material facts and information regarding the earnings, accumulations, and expenses of each party that have been set forth in the income and expense declaration.

(c) The parties may stipulate to a mutual waiver of the requirements of subdivision (a) concerning the final declaration of disclosure by execution of a waiver in a marital settlement agreement or by stipulated judgment or a stipulation entered into in open court. The waiver shall include all of the following representations:

(1) Both parties have complied with Section 2104 and the preliminary declarations of disclosure have been completed and exchanged.

(2) Both parties have completed and exchanged a current income and expense declaration.

(3) The waiver is knowingly, intelligently, and voluntarily entered into by each of the parties.

(4) Each party understands that by signing the waiver, he or she may be affecting his or her ability to have the judgment set aside as provided by law.

(d) Whether execution of a mutual waiver of the final declaration of disclosure requirements pursuant to subdivision (c) will affect the rights of either party to have the judgment set aside or will affect the fiduciary obligations of each to the other shall be decided by a court based on the law and the facts of each particular case. The authority to execute a mutual waiver provided by this section is not intended, in and of itself, to affect the law regarding the fiduciary obligations owed by the parties, the parties' rights with respect to setting aside a judgment, or any other rights or responsibilities of the parties as provided by law.

(e) In making an order setting aside a judgment for failure to comply with this section, the court may limit the set aside to those portions of the judgment materially affected by the nondisclosure.

(f) As to any judgment entered prior to January 1, 1996, the rights of any party to have any or all of the judgment set aside for failure to serve and file final declarations of disclosure, and the validity of any alleged waiver of the disclosure requirement, shall be subject to this section.

SEC. 9. Section 2106 of the Family Code is amended to read:

2106. Except as provided in subdivision (c) of Section 2105 or in Section 2110, absent good cause, no judgment shall be entered with respect to the parties' property rights without each party, or the attorney for that party in this matter, having executed and served a copy of the final declaration of disclosure and current income and expense declaration. Each party shall execute and file with the court a declaration signed under penalty of perjury stating that service of the final declaration of disclosure and current income and expense declaration was made on the other party or that service of the final declaration of disclosure has been waived pursuant to subdivision (c) of Section 2105 or in Section 2110.

SEC. 10. Section 2110 of the Family Code is amended to read:

2110. In the case of a default judgment, the petitioner may waive the final declaration of disclosure requirements provided in this chapter, and shall not be required to serve a final declaration of disclosure on the respondent nor receive a final declaration of disclosure from the respondent. However, a preliminary declaration of disclosure by the petitioner is required.

SEC. 11. Section 2330 of the Family Code is amended to read:

2330. (a) A proceeding for dissolution of marriage or for legal separation of the parties is commenced by filing a petition entitled "In re the marriage of _____ and _____" which shall state whether it is a petition for dissolution of the marriage or for legal separation of the parties.

(b) In a proceeding for dissolution of marriage or for legal separation of the parties, the petition shall set forth among other matters, as nearly as can be ascertained, the following facts:

(1) The date of marriage.

(2) The date of separation.

(3) The number of years from marriage to separation.

(4) The number of children of the marriage, if any, and if none a statement of that fact.

(5) The age and birth date of each minor child of the marriage.

SEC. 12. Section 2330.1 of the Family Code is amended to read:

2330.1. In any proceeding for dissolution of marriage, for legal separation of the parties, or for the support of children, the petition or complaint may list children born before the marriage to the same parties and, pursuant to the terms of the Uniform Parentage Act, a determination of paternity may be made in the action. In addition,

a supplemental complaint may be filed, in any of those proceedings, pursuant to Section 464 of the Code of Civil Procedure, 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 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 this code.

SEC. 13. Section 2336 of the Family Code is amended to read:

2336. (a) No judgment of dissolution or of legal separation of the parties may be granted upon the default of one of the parties or upon a statement or finding of fact made by a referee; but the court shall, in addition to the statement or finding of the referee, require proof of the grounds alleged, and the proof, if not taken before the court, shall be by affidavit. In all cases where there are minor children of the parties, each affidavit or offer of proof shall include an estimate by the declarant or affiant of the monthly gross income of each party. If the declarant or affiant has no knowledge of the estimated monthly income of a party, the declarant or affiant shall state why he or she has no knowledge. In all cases where there is a community estate, each affidavit or offer of proof shall include an estimate of the value of the assets and the debts the declarant or affiant proposes to be distributed to each party, unless the declarant or affiant has filed, or concurrently files, a complete and accurate property declaration with the court.

(b) If the proof is by affidavit, the personal appearance of the affiant is required only when it appears to the court that any of the following circumstances exist:

(1) Reconciliation of the parties is reasonably possible.

(2) A proposed child custody order is not in the best interest of the child.

(3) A proposed child support order is less than a noncustodial parent is capable of paying.

(4) A personal appearance of a party or interested person would be in the best interests of justice.

(c) An affidavit submitted pursuant to this section shall contain a stipulation by the affiant that the affiant understands that proof will be by affidavit and that the affiant will not appear before the court unless so ordered by the court.

SEC. 14. Section 2337 of the Family Code is amended to read:

2337. (a) In a proceeding for dissolution of marriage, the court, upon noticed motion, may sever and grant an early and separate trial on the issue of the dissolution of the status of the marriage apart from other issues.

(b) A preliminary declaration of disclosure with a completed schedule of assets and debts shall be served on the nonmoving party with the noticed motion unless it has been served previously, or

unless the parties stipulate in writing to defer service of the preliminary declaration of disclosure until a later time.

(c) The court may impose upon a party any of the following conditions on granting a severance of the issue of the dissolution of the status of the marriage, and in case of that party's death, an order of any of the following conditions continues to be binding upon that party's estate:

(1) The party shall indemnify and hold the other party harmless from any taxes, reassessments, interest, and penalties payable by the other party if the dissolution of the marriage before the division of the parties' community estate results in a taxable event to either of the parties by reason of the ultimate division of their community estate, which taxes would not have been payable if the parties were still married at the time the division was made.

(2) Until judgment has been entered on all remaining issues and has become final, the party shall maintain all existing health and medical insurance coverage for the other party and the minor children as named dependents, so long as the party is legally able to do so. At the time the party is no longer legally eligible to maintain the other party as a named dependent under the existing health and medical policies, the party or the party's estate shall, at the party's sole expense, purchase and maintain health and medical insurance coverage that is comparable to the existing health and medical insurance coverage. If comparable insurance coverage is not obtained, the party or the party's estate is responsible for the health and medical expenses incurred by the other party that would have been covered by the insurance coverage, and shall indemnify and hold the other party harmless from any adverse consequences resulting from the lack of insurance.

(3) Until judgment has been entered on all remaining issues and has become final, the party shall indemnify and hold the other party harmless from any adverse consequences resulting to the other party if the bifurcation results in a termination of the other party's right to a probate homestead in the residence in which the other party resides at the time the severance is granted.

(4) Until judgment has been entered on all remaining issues and has become final, the party shall indemnify and hold the other party harmless from any adverse consequences resulting to the other party if the bifurcation results in the loss of the rights of the other party to a probate family allowance as the surviving spouse of the party.

(5) Until judgment has been entered on all remaining issues and has become final, the party shall indemnify and hold the other party harmless from any adverse consequences resulting to the other party if the bifurcation results in the loss of the other party's rights to pension benefits, elections, or survivors' benefits under the party's pension or retirement plan to the extent that the other party would have been entitled to those benefits or elections as the surviving spouse of the party.

(6) Prior to entry of judgment terminating status, both of the following shall occur:

(A) The party's retirement or pension plan shall be joined as a party to the proceeding for dissolution.

(B) If applicable, an order pursuant to Section 2610 shall be entered with reference to the defined benefit or similar plan pending the ultimate resolution of the distribution of benefits under the employee benefit plan.

(7) The party shall indemnify and hold the other party harmless from any adverse consequences if the bifurcation results in the loss of rights to social security benefits or elections to the extent the other party would have been entitled to those benefits or elections as the surviving spouse of the party.

(8) Any other condition the court determines is just and equitable.

(d) A judgment granting a dissolution of the status of the marriage shall expressly reserve jurisdiction for later determination of all other pending issues.

(e) If the party dies after the entry of judgment granting a dissolution of marriage, any obligation imposed by this section shall be enforceable against any asset, including the proceeds thereof, against which these obligations would have been enforceable prior to the person's death.

SEC. 15. Section 4055 of the Family Code is amended to read:

4055. (a) The statewide uniform guideline for determining child support orders is as follows: CS = K [HN — (H%) (TN)].

(b) (1) The components of the formula are as follows:

(A) CS = child support amount.

(B) K = amount of both parents' income to be allocated for child support as set forth in paragraph (3).

(C) HN = high earner's net monthly disposable income.

(D) H% = approximate percentage of time that the high earner has or will have primary physical responsibility for the children compared to the other parent. In cases in which parents have different time-sharing arrangements for different children, H% equals the average of the approximate percentages of time the high earner parent spends with each child.

(E) TN = total net monthly disposable income of both parties.

(2) To compute net disposable income, see Section 4059.

(3) K (amount of both parents' income allocated for child support) equals one plus H% (if H% is less than or equal to 50 percent) or two minus H% (if H% is greater than 50 percent) times the following fraction:

Total Net Disposable Income Per Month	K
$0–800	0.20 + TN/16,000
$801–6,666	0.25
$6,667–10,000	0.10 + 1,000/TN
Over $10,000	0.12 + 800/TN

For example, if H% equals 20 percent and the total monthly net disposable income of the parents is $1,000, K = (1 + 0.20) × 0.25, or 0.30. If H% equals 80 percent and the total monthly net disposable income of the parents is $1,000, K = (2 — 0.80) × 0.25, or 0.30.

(4) For more than one child, multiply CS by:

2 children	1.6
3 children	2
4 children	2.3
5 children	2.5
6 children	2.625
7 children	2.75
8 children	2.813
9 children	2.844
10 children	2.86

(5) If the amount calculated under the formula results in a positive number, the higher earner shall pay that amount to the lower earner. If the amount calculated under the formula results in a negative number, the lower earner shall pay the absolute value of that amount to the higher earner.

(6) In any default proceeding where proof is by affidavit pursuant to Section 2336, or in any proceeding for child support in which a party fails to appear after being duly noticed, H% shall be set at zero in the formula if the noncustodial parent is the higher earner or at 100 if the custodial parent is the higher earner, where there is no evidence presented demonstrating the percentage of time that the noncustodial parent has primary physical responsibility for the children. H% shall not be set as described above if the moving party in a default proceeding is the noncustodial parent or if the party who fails to appear after being duly noticed is the custodial parent. A statement by the party who is not in default as to the percentage of time that the noncustodial parent has primary physical responsibility for the children shall be deemed sufficient evidence.

(7) In all cases in which the net disposable income per month of the obligor is less than one thousand dollars ($1,000), the court shall rule on whether a low-income adjustment shall be made. The ruling shall be based on the facts presented to the court, the principles

provided in Section 4053, and the impact of the contemplated adjustment on the respective net incomes of the obligor and the obligee. Where the court has ruled that a low-income adjustment shall be made, the child support amount otherwise determined under this section shall be reduced by an amount that is no greater than the amount calculated by multiplying the child support amount otherwise determined under this section by a fraction, the numerator of which is 1,000 minus the obligor's net disposable income per month, and the denominator of which is 1,000. If a low-income adjustment is allowed, the court shall state the reasons supporting the adjustment in writing or on the record and shall document the amount of the adjustment and the underlying facts and circumstances.

(8) Unless the court orders otherwise, the order for child support shall allocate the support amount so that the amount of support for the youngest child is the amount of support for one child, and the amount for the next youngest child is the difference between that amount and the amount for two children, with similar allocations for additional children. However, this paragraph does not apply to cases in which there are different time-sharing arrangements for different children or where the court determines that the allocation would be inappropriate in the particular case.

(c) If a court uses a computer to calculate the child support order, the computer program shall not automatically default affirmatively or negatively on whether a low-income adjustment is to be applied. If the low-income adjustment is applied, the computer program shall not provide the amount of the low-income adjustment. Instead, the computer program shall ask the user whether or not to apply the low-income adjustment, and if answered affirmatively, the computer program shall provide the range of the adjustment permitted by paragraph (7) of subdivision (b).

SEC. 16. Section 6203 of the Family Code is amended to read:

6203. For purposes of this act, "abuse" means any of the following:

(a) Intentionally or recklessly to cause or attempt to cause bodily injury.

(b) Sexual assault.

(c) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another.

(d) To engage in any behavior that has been or could be enjoined pursuant to Section 6320.

SEC. 17. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the

Department of Justice, court personnel, or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Protective Order Registry, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to harassment or domestic violence pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective order issued by the court of another state, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, that local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge.

(h) For the purposes of this part, "electronic transmission" shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

SEC. 17.1. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel, or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Protective Order Registry, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based

upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data. All data with respect to criminal court protective orders issued under subdivision (g) of Section 136.2 of the Penal Code shall be transmitted by the court or its designee within one business day to law enforcement personnel by either one of the following methods:

(1) Transmitting a physical copy of the order to a local law enforcement agency authorized by the Department of Justice to enter orders into CLETS.

(2) With the approval of the Department of Justice, entering the order into CLETS directly.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to harassment or domestic violence pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective order issued by the court of another state, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also

be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, that local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge.

(h) For the purposes of this part, ''electronic transmission'' shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

SEC. 17.2. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel, or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Protective Order Registry, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department

of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to harassment or domestic violence pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective order issued by the court of another state, tribe, or territory, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and,

if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, that local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge. The informational packet shall also contain a statement that the protective order is enforceable in any state, territory, or reservation, and general information about agencies in other jurisdictions that may be contacted regarding enforcement of an order issued by a court of this state.

(h) For the purposes of this part, "electronic transmission" shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

SEC. 17.3. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel, or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Protective Order Registry, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and

those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to harassment or domestic violence pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective order issued by the court of another state, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

(8) The terms and conditions of any restrictions on the ownership or possession of firearms.

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, that local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge.

(h) For the purposes of this part, "electronic transmission" shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

SEC. 17.4. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel, or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Protective Order Registry, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data. All data with respect to criminal court protective orders issued under subdivision (g) of Section 136.2 of the Penal Code shall be transmitted by the court or its designee within one business day to law enforcement personnel by either one of the following methods:

(1) Transmitting a physical copy of the order to a local law enforcement agency authorized by the Department of Justice to enter orders into CLETS.

(2) With the approval of the Department of Justice, entering the order into CLETS directly.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to harassment or domestic violence pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective order issued by the court of another state, tribe, or territory, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and,

if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, that local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge. The informational packet shall also contain a statement that the protective order is enforceable in any state, territory, or reservation, and general information about agencies in other jurisdictions that may be contacted regarding enforcement of an order issued by a court of this state.

(h) For the purposes of this part, "electronic transmission" shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

SEC. 17.5. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel, or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Protective Order Registry, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and

those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to harassment or domestic violence pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective order issued by the court of another state, tribe, or territory, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

(8) The terms and conditions of any restrictions on the ownership or possession of firearms.

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, that local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge. The informational packet shall also contain a statement that the protective order is enforceable in any state, territory, or reservation, and general information about agencies in other jurisdictions that may be contacted regarding enforcement of an order issued by a court of this state.

(h) For the purposes of this part, "electronic transmission" shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

SEC. 17.6. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel, or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Protective Order Registry, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data. All data with respect to

criminal court protective orders issued under subdivision (g) of Section 136.2 of the Penal Code shall be transmitted by the court or its designee within one business day to law enforcement personnel by either one of the following methods:

(1) Transmitting a physical copy of the order to a local law enforcement agency authorized by the Department of Justice to enter orders into CLETS.

(2) With the approval of the Department of Justice, entering the order into CLETS directly.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to harassment or domestic violence pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective order issued by the court of another state, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

(8) The terms and conditions of any restrictions on the ownership or possession of firearms.

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, that local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge.

(h) For the purposes of this part, "electronic transmission" shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

SEC. 17.7. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel, or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Protective Order Registry, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based

upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data. All data with respect to criminal court protective orders issued under subdivision (g) of Section 136.2 of the Penal Code shall be transmitted by the court or its designee within one business day to law enforcement personnel by either one of the following methods:

(1) Transmitting a physical copy of the order to a local law enforcement agency authorized by the Department of Justice to enter orders into CLETS.

(2) With the approval of the Department of Justice, entering the order into CLETS directly.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to harassment or domestic violence pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective order issued by the court of another state, tribe, or territory, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

(8) The terms and conditions of any restrictions on the ownership or possession of firearms.

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms

of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, that local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge. The informational packet shall also contain a statement that the protective order is enforceable in any state, territory, or reservation, and general information about agencies in other jurisdictions that may be contacted regarding enforcement of an order issued by a court of this state.

(h) For the purposes of this part, "electronic transmission" shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

SEC. 18. Section 7541 of the Family Code is amended to read:

7541. (a) Notwithstanding Section 7540, if the court finds that the conclusions of all the experts, as disclosed by the evidence based on blood tests performed pursuant to Chapter 2 (commencing with Section 7550), are that the husband is not the father of the child, the question of paternity of the husband shall be resolved accordingly.

(b) The notice of motion for blood tests under this section may be filed not later than two years from the child's date of birth by the husband, or for the purposes of establishing paternity by the

presumed father or the child through or by the child's guardian ad litem. As used in this subdivision, "presumed father" has the meaning given in Sections 7611 and 7612.

(c) The notice of motion for blood tests under this section may be filed by the mother of the child not later than two years from the child's date of birth if the child's biological father has filed an affidavit with the court acknowledging paternity of the child.

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

(e) Subdivision (a) does not apply, and blood tests may not be used to challenge paternity, in any of the following cases:

(1) A case that reached final judgment of paternity on or before September 30, 1980.

(2) A case coming within Section 7613.

(3) A case in which the wife, with the consent of the husband, conceived by means of a surgical procedure.

SEC. 19. Section 810 of the Probate Code is amended to read:

810. The Legislature finds and declares the following:

(a) For purposes of this part, there shall exist a rebuttable presumption affecting the burden of proof that all persons have the capacity to make decisions and to be responsible for their acts or decisions.

(b) A person who has a mental or physical disorder may still be capable of contracting, conveying, marrying, making medical decisions, executing wills or trusts, and performing other actions.

(c) A judicial determination that a person is totally without understanding, or is of unsound mind, or suffers from one or more mental deficits so substantial that, under the circumstances, the person should be deemed to lack the legal capacity to perform a specific act, should be based on evidence of a deficit in one or more of the person's mental functions rather than on a diagnosis of a person's mental or physical disorder.

SEC. 20. Section 811 of the Probate Code is amended to read:

811. (a) A determination that a person is of unsound mind or lacks the capacity to make a decision or do a certain act, including, but not limited to, the incapacity to contract, to make a conveyance, to marry, to make medical decisions, to execute wills, or to execute trusts, shall be supported by evidence of a deficit in at least one of the following mental functions, subject to subdivision (b), and evidence of a correlation between the deficit or deficits and the decision or acts in question:

(1) Alertness and attention, including, but not limited to, the following:

(A) Level of arousal or consciousness.

(B) Orientation to time, place, person, and situation.

(C) Ability to attend and concentrate.

(2) Information processing, including, but not limited to, the following:

(A) Short- and long-term memory, including immediate recall.

(B) Ability to understand or communicate with others, either verbally or otherwise.

(C) Recognition of familiar objects and familiar persons.

(D) Ability to understand and appreciate quantities.

(E) Ability to reason using abstract concepts.

(F) Ability to plan, organize, and carry out actions in one's own rational self-interest.

(G) Ability to reason logically.

(3) Thought processes. Deficits in these functions may be demonstrated by the presence of the following:

(A) Severely disorganized thinking.

(B) Hallucinations.

(C) Delusions.

(D) Uncontrollable, repetitive, or intrusive thoughts.

(4) Ability to modulate mood and affect. Deficits in this ability may be demonstrated by the presence of a pervasive and persistent or recurrent state of euphoria, anger, anxiety, fear, panic, depression, hopelessness or despair, helplessness, apathy or indifference, that is inappropriate in degree to the individual's circumstances.

(b) A deficit in the mental functions listed above may be considered only if the deficit, by itself or in combination with one or more other mental function deficits, significantly impairs the person's ability to understand and appreciate the consequences of his or her actions with regard to the type of act or decision in question.

(c) In determining whether a person suffers from a deficit in mental function so substantial that the person lacks the capacity to do a certain act, the court may take into consideration the frequency, severity, and duration of periods of impairment.

(d) The mere diagnosis of a mental or physical disorder shall not be sufficient in and of itself to support a determination that a person is of unsound mind or lacks the capacity to do a certain act.

(e) This part applies only to the evidence that is presented to, and the findings that are made by, a court determining the capacity of a person to do a certain act or make a decision, including, but not limited to, making medical decisions. Nothing in this part shall affect the decisionmaking process set forth in Section 1418.8 of the Health and Safety Code, nor increase or decrease the burdens of documentation on, or potential liability of, health care providers who, outside the judicial context, determine the capacity of patients to make a medical decision.

SEC. 21. Section 1826 of the Probate Code is amended to read:

1826. Regardless of whether the proposed conservatee attends the hearing, the court investigator shall do all of the following:

(a) Interview the proposed conservatee personally.

(b) Inform the proposed conservatee of the contents of the citation, of the nature, purpose, and effect of the proceeding, and of the right of the proposed conservatee to oppose the proceeding, to attend the hearing, to have the matter of the establishment of the conservatorship tried by jury, to be represented by legal counsel if the proposed conservatee so chooses, and to have legal counsel appointed by the court if unable to retain legal counsel.

(c) Determine whether it appears that the proposed conservatee is unable to attend the hearing and, if able to attend, whether the proposed conservatee is willing to attend the hearing.

(d) Review the allegations of the petition as to why the appointment of the conservator is required and, in making his or her determination, do the following:

(1) Refer to the supplemental information form submitted by the petitioner and consider the facts set forth in the form that address each of the categories specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 1821.

(2) Consider, to the extent practicable, whether he or she believes the proposed conservatee suffers from any of the mental function deficits listed in subdivision (a) of Section 811 that significantly impairs the proposed conservatee's ability to understand and appreciate the consequences of his or her actions in connection with any of the functions described in subdivision (a) or (b) of Section 1801 and identify the observations that support that belief.

(e) Determine whether the proposed conservatee wishes to contest the establishment of the conservatorship.

(f) Determine whether the proposed conservatee objects to the proposed conservator or prefers another person to act as conservator.

(g) Determine whether the proposed conservatee wishes to be represented by legal counsel and, if so, whether the proposed conservatee has retained legal counsel and, if not, the name of an attorney the proposed conservatee wishes to retain.

(h) Determine whether the proposed conservatee is capable of completing an affidavit of voter registration.

(i) If the proposed conservatee has not retained legal counsel, determine whether the proposed conservatee desires the court to appoint legal counsel.

(j) Determine whether the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the interests of the proposed conservatee in any case where the proposed conservatee does not plan to retain legal counsel and has not requested the appointment of legal counsel by the court.

(k) Report to the court in writing, at least five days before the hearing, concerning all of the foregoing, including the proposed conservatee's express communications concerning both of the following:

(1) Representation by legal counsel.

(2) Whether the proposed conservatee is not willing to attend the hearing, does not wish to contest the establishment of the conservatorship, and does not object to the proposed conservator or prefer that another person act as conservator.

(*l*) Mail, at least five days before the hearing, a copy of the report referred to in subdivision (k) to all of the following:

(1) The attorney, if any, for the petitioner.

(2) The attorney, if any, for the proposed conservatee.

(3) Any other persons as the court orders.

(m) The court investigator has discretion to release the report required by this section to the public conservator, interested public agencies, and the long-term care ombudsman.

(n) The report required by this section is confidential and shall be made available only to parties, persons given notice of the petition who have requested this report or who have appeared in the proceedings, their attorneys, and the court. The court has discretion at any other time to release the report, if it would serve the interests of the conservatee. The county clerk shall provide for the limitation of the report exclusively to persons entitled to its receipt.

(o) This section does not apply to a proposed conservatee who has personally executed the petition for conservatorship, or one who has nominated his or her own conservator, if he or she attends the hearing.

(p) If the court investigator has performed an investigation within the preceding six months and furnished a report thereon to the court, the court may order, upon good cause shown, that another investigation is not necessary or that a more limited investigation may be performed.

SEC. 22. Section 2620 of the Probate Code is amended to read:

2620. (a) At the expiration of one year from the time of appointment and thereafter not less frequently than biennially, unless otherwise ordered by the court, the guardian or conservator shall present the account of the guardian or conservator to the court for settlement and allowance in the manner provided in Chapter 4 (commencing with Section 1060) of Part 1 of Division 3.

(b) The final account of the guardian or conservator following the death of the ward or conservatee shall include an account for the period that ended on the date of death and a separate account for the period subsequent to the date of death.

SEC. 23. Section 2640 of the Probate Code is amended to read:

2640. (a) At any time after the filing of the inventory and appraisal, but not before the expiration of 90 days from the issuance of letters or any other period of time as the court for good cause orders, the guardian or conservator of the estate may petition the court for an order fixing and allowing compensation to any one or more of the following:

(1) The guardian or conservator of the estate for services rendered to that time.

(2) The guardian or conservator of the person for services rendered to that time.

(3) The attorney for services rendered to that time by the attorney to the guardian or conservator of the person or estate or both.

(b) Notice of the hearing shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(c) Upon the hearing, the court shall make an order allowing (1) any compensation requested in the petition the court determines is just and reasonable to the guardian or conservator of the estate for services rendered or to the guardian or conservator of the person for services rendered, or to both, and (2) any compensation requested in the petition the court determines is reasonable to the attorney for services rendered to the guardian or conservator of the person or estate or both. The compensation allowed to the guardian or conservator of the person, the guardian or conservator of the estate, and to the attorney may, in the discretion of the court, include compensation for services rendered before the date of the order appointing the guardian or conservator. The compensation allowed shall thereupon be charged to the estate. Legal services for which the attorney may be compensated include those services rendered by any paralegal performing legal services under the direction and supervision of an attorney. The petition or application for compensation shall set forth the hours spent and services performed by the paralegal.

SEC. 24. Section 8250 of the Probate Code is amended to read:

8250. (a) When a will is contested under Section 8004, the contestant shall file with the court an objection to probate of the will. Thereafter, a summons shall be issued and served, with a copy of the objection, on the persons required by Section 8110 to be served with notice of hearing of a petition for administration of the decedent's estate. The summons shall be issued and served as provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure. The summons shall contain a direction that the persons summoned file with the court a written pleading in response to the contest within 30 days after service of the summons.

(b) A person named as executor in the will is under no duty to defend a contest until the person is appointed personal representative.

SEC. 25. Section 8271 of the Probate Code is amended to read:

8271. (a) On the filing of the petition, a summons shall be directed to the personal representative and to the heirs and devisees of the decedent, so far as known to the petitioner. The summons shall contain a direction that the persons summoned file with the court a written pleading in response to the petition within 30 days after service of the summons. Failure of a person timely to respond to the summons precludes the person from further participation in the

revocation proceeding, but does not otherwise affect the person's interest in the estate.

(b) The summons shall be issued and served with a copy of the petition and proceedings had as in the case of a contest of the will.

(c) If a person fails timely to respond to the summons:

(1) The case is at issue notwithstanding the failure and the case may proceed on the petition and other documents filed by the time of the hearing, and no further pleadings by other persons are necessary.

(2) The person may not participate further in the contest, but the person's interest in the estate is not otherwise affected.

(3) The person is bound by the decision in the proceeding.

SEC. 26. (a) Section 17.1 of this bill incorporates amendments to Section 6380 of the Family Code proposed by both this bill and AB 1531. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 6380 of the Family Code, (3) AB 2177 and SB 1682 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1531, in which case Sections 17, 17.2, 17.3, 17.4, 17.5, 17.6, and 17.7 of this bill shall not become operative.

(b) Section 17.2 of this bill incorporates amendments to Section 6380 of the Family Code proposed by this bill and AB 2177. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 6380 of the Family Code, and (3) AB 1531 and SB 1682 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 2177, in which case Sections 17, 17.1, 17.3, 17.4, 17.5, 17.6, and 17.7 of this bill shall not become operative.

(c) Section 17.3 of this bill incorporates amendments to Section 6380 of the Family Code proposed by this bill and SB 1682. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 6380 of the Family Code, and (3) AB 1531 and AB 2177 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after SB 1682, in which case Sections 17, 17.1, 17.2, 17.4, 17.5, 17.6, and 17.7 of this bill shall not become operative.

(d) Section 17.4 of this bill incorporates amendments to Section 6380 of the Family Code proposed by this bill and AB 1531 and AB 2177. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1999, (2) all three bills amend Section 6380 of the Family Code, and (3) SB 1682 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1531 and AB 2177, in which case Sections 17, 17.1, 17.2, 17.3, 17.5, 17.6, and 17.7 of this bill shall not become operative.

(e) Section 17.5 of this bill incorporates amendments to Section 6380 of the Family Code proposed by this bill and AB 2177 and SB 1682. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1999, (2) all three bills

amend Section 6380 of the Family Code, and (3) AB 1531 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2177 and SB 1682, in which case Sections 17, 17.1, 17.2, 17.3, 17.4, 17.6, and 17.7 of this bill shall not become operative.

(f) Section 17.6 of this bill incorporates amendments to Section 6380 of the Family Code proposed by this bill, AB 1531, and SB 1682. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1999, (2) all three bills amend Section 6380 of the Family Code, and (3) AB 2177 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1531 and SB 1682, in which case Sections 17, 17.1, 17.2, 17.3, 17.4, 17.5, and 17.7 of this bill shall not become operative.

(g) Section 17.7 of this bill incorporates amendments to Section 6380 of the Family Code proposed by this bill and AB 1531, AB 2177, and SB 1682. It shall only become operative if (1) all four bills are enacted and become effective on or before January 1, 1999, (2) all four bills amend Section 6380 of the Family Code, and (3) this bill is enacted after AB 1531, AB 2177, and SB 1682, in which case Sections 17, 17.1, 17.2, 17.3, 17.4, 17.5, and 17.6 of this bill shall not become operative.

SEC. 27. 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 582

An act to amend Sections 7500.1 and 7507.3 of the Business and Professions Code, to amend Sections 22202 and 22329 of the Financial

Code, and to amend Sections 14602.6, 14607.6, and 23596 of the Vehicle Code, relating to collateral recovery.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. Section 7500.1 of the Business and Professions Code is amended to read:

7500.1. The following terms as used in this chapter have the meaning expressed in this section.

(a) "Person" includes any individual, partnership, limited liability company, or corporation.

(b) "Department" means the Department of Consumer Affairs.

(c) "Director" means the Director of Consumer Affairs.

(d) "Bureau" means the Bureau of Security and Investigative Services.

(e) "Chief" means the Chief of the Bureau of Security and Investigative Services.

(f) "Licensee" means an individual, partnership, limited liability company, or corporation licensed under this chapter as a repossession agency.

(g) "Qualified certificate holder" or "qualified manager" is a person who possesses a valid qualification certificate in accordance with the provisions of Article 5 (commencing with Section 7504) and is in active control or management of, and who is a director of, the licensee's place of business.

(h) "Registrant" means a person registered under this chapter.

(i) "Services" means any duty or labor to be rendered by one person for another.

(j) "Dangerous drugs" means any controlled substances as defined in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(k) "Deadly weapon" means and includes any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, dirk, dagger, pistol, or revolver, or any other firearm, any knife having a blade longer than five inches, any razor with an unguarded blade, and any metal pipe or bar used or intended to be used as a club.

(*l*) "Combustibles" means any substance or article that is capable of undergoing combustion or catching fire, or that is flammable, if retained.

(m) "Health hazard" means any personal effects which if retained would produce an unsanitary or unhealthful condition.

(n) "Advertisement" means any written or printed communication, including a directory listing, except a free telephone directory listing which does not allow space for a license number.

(o) "Assignment" means a written authorization by the legal owner, lienholder, lessor or lessee to skip trace, locate, or repossess or to collect money payment in lieu of repossession of, any collateral, including, but not limited to, collateral registered under the Vehicle Code that is subject to a security agreement that contains a repossession clause. "Assignment" also means a written authorization by an employer to recover any collateral entrusted to an employee or former employee if the possessor is wrongfully in possession of the collateral. A photocopy, facsimile copy, or electronic copy of an assignment shall have the same force and effect as an original written assignment.

(p) "Security agreement" means an obligation, pledge, mortgage, chattel mortgage, lease agreement, deposit, or lien, given by a debtor as security for payment or performance of his or her debt, by furnishing the creditor with a recourse to be used in case of failure in the principal obligation. "Security agreement" also includes a bailment where an employer-employee relationship exists or existed between the bailor and the bailee.

(q) "Legal owner" means a person holding a security interest in any collateral that is subject to a security agreement, a lien against any collateral, or an interest in any collateral that is subject to a lease agreement.

(r) "Private building" means and includes any dwelling, outbuilding, or other enclosed structure.

(s) "Secured area" means and includes any fenced and locked area.

(t) "Violent act" means any act that results in bodily harm or injury to any party involved.

(u) "Collateral" means any vehicle, boat, recreational vehicle, motor home, appliance, or other property that is subject to a security agreement.

(v) "Personal effects" means any property contained within repossessed collateral that is not the property of the legal owner.

(w) "Debtor" means any person obligated under a security agreement.

SEC. 2. Section 7507.3 of the Business and Professions Code is amended to read:

7507.3. A repossession agency shall be required to keep and maintain adequate records of all transactions, including, but not limited to, assignment forms; vehicle report of repossession required by Section 28 of the Vehicle Code; vehicle condition reports, including odometer readings; personal effects inventory; notice of seizure; and records of all transactions pertaining to the sale of collateral that has been repossessed, including, but not limited to, bids solicited and received, cash received, deposits made to the trust account, remittances to the seller, and allocation of any moneys not so remitted to appropriate ledger accounts. Records, including bank statements of the trust account, shall be retained for a period of not

less than four years and shall be available for examination by the bureau upon demand. In addition, collateral and personal effects storage areas shall be made accessible for inspection by the bureau upon demand. An assignment form may be an original, a photocopy, a facsimile copy, or a copy stored in an electronic format.

SEC. 3. Section 22202 of the Financial Code is amended to read:

22202. "Charges" do not include any of the following:

(a) Commissions received as a licensed insurance agent or broker in connection with insurance written as provided in Section 22313.

(b) Amounts not in excess of the amounts specified in subdivision (c) of Section 3068 of the Civil Code paid to holders of possessory liens, imposed pursuant to Chapter 6.5 (commencing with Section 3067) of Title 14 of Part 4 of Division 3 of the Civil Code, to release motor vehicles that secure loans subject to this division.

(c) Court costs, excluding attorney's fees, incurred in a suit and recovered against a debtor who defaults on his or her loan.

(d) Fees paid to a licensee for the privilege of participating in an open-end credit program, which fees are to cover administrative costs and are imposed upon executing the open-end loan agreement and on annual renewal dates or anniversary dates thereafter.

(e) Amounts received by a licensee from a seller, from whom the borrower obtains money, goods, labor, or services on credit, in connection with a transaction under an open-end credit program that are paid or deducted from the loan proceeds paid to the seller at the direction of the borrower and which are an obligation of the seller to the licensee for the privilege of allowing the seller to participate in the licensee's open-end credit program. Amounts received by a licensee from a seller pursuant to this subdivision may not exceed 6 percent of the loan proceeds paid to the seller at the direction of the borrower.

(f) Actual and necessary fees not exceeding five hundred dollars ($500) paid in connection with the repossession of a motor vehicle to repossession agencies licensed pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code provided that the licensee complies with Sections 22328 and 22329, and actual fees paid to a licensee in conformity with Sections 26751 and 41612 of the Government Code in an amount not exceeding the amount specified in those sections of the Government Code.

(g) Moneys paid to, and commissions and benefits received by, a licensee for the sale of goods, services, or insurance, whether or not the sale is in connection with a loan, that the buyer by a separately signed authorization acknowledges is optional, if sale of the goods, services, or insurance has been authorized pursuant to Section 22154.

SEC. 4. Section 22329 of the Financial Code is amended to read:

22329. (a) This section applies to a loan secured in whole or in part by a lien on a motor vehicle as defined by subdivision (k) of Section 2981 of the Civil Code.

(b) In the absence of default in the performance of any of the borrower's obligations under the loan, the licensee may not accelerate the maturity of any part or all of the amount due thereunder or repossess the motor vehicle.

(c) If, after default by the borrower, the licensee repossesses or voluntarily accepts surrender of the motor vehicle, any person liable on the loan shall have a right to reinstate the loan and the licensee shall not accelerate the maturity of any part or all of the loan prior to the expiration of the right to reinstate, unless the licensee reasonably and in good faith determines that:

(1) The borrower or any other person liable on the loan by omission or commission intentionally provided false or misleading information of material importance on his or her credit application.

(2) The borrower or any other person liable on the loan has concealed the motor vehicle or removed it from the state in order to avoid repossession.

(3) The borrower or any other person liable on the loan has committed or threatens to commit acts of destruction, or has failed to take care of the motor vehicle in a reasonable manner, so that the motor vehicle has or may become substantially impaired in value.

(d) Exercise of the right to reinstate the loan shall be limited to once in any 12-month period and twice during the term of the loan.

(e) The provisions of this subdivision shall govern the method by which a loan shall be reinstated with respect to curing events of default that were grounds for repossession or that occurred subsequent to repossession.

(1) Where the default is the result of the borrower's failure to make any payment due under the loan, the borrower or any other person liable on the loan shall make the defaulted payments and pay any applicable delinquency charges.

(2) Where the default is the result of the borrower's failure to keep and maintain the motor vehicle free from all encumbrances and liens of every kind, the borrower or any person liable on the loan shall either satisfy all the encumbrances and liens or, in the event the licensee satisfies the encumbrances and liens, the borrower or any other person liable on the loan shall reimburse the licensee for all reasonable costs and expenses incurred therefor.

(3) Where the default is the result of the borrower's failure to keep and maintain insurance on the motor vehicle, the borrower or any other person liable on the loan shall either obtain the insurance or, in the event the licensee has obtained the insurance, the borrower or any other person liable on the loan shall reimburse the licensee for premiums paid and all reasonable costs and expenses incurred therefor.

(4) Where the default is the result of the borrower's failure to perform any other obligation under the loan, unless the licensee has made a good faith determination that the default is so substantial as to be incurable, the borrower or any other person liable on the loan

shall reimburse the licensee for all reasonable costs and expenses incurred therefor.

(5) Additionally, the borrower or any other person liable on the loan shall reimburse the licensee for actual and necessary fees in an amount not exceeding the amount specified in subdivision (f) of Section 22202 paid in connection with the repossession of a motor vehicle to a repossession agency licensed pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code, and actual fees in conformity with Sections 26751 and 41612 of the Government Code in an amount not exceeding the amount specified in those sections of the Government Code.

(f) If the licensee denies the right to reinstatement under subdivision (c) or paragraph (4) of subdivision (e), the licensee shall have the burden of proof that the denial was justified in that it was reasonable and made in good faith. If the licensee fails to sustain the burden of proof, the licensee shall not be entitled to a deficiency.

SEC. 5. Section 14602.6 of the Vehicle Code is amended to read:

14602.6. (a) Whenever a peace officer determines that a person was driving a vehicle while his or her driving privilege was suspended or revoked or without ever having been issued a license, the peace officer may either immediately arrest that person and cause the removal and seizure of that vehicle or, if the vehicle is involved in a traffic collision, cause the removal and seizure of the vehicle, without the necessity of arresting the person in accordance with Chapter 10 (commencing with Section 22650) of Division 11. A vehicle so impounded shall be impounded for 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. Failure to notify the legal owner within two working days shall prohibit the impounding agency from charging for more than 15 days' impoundment when the legal owner redeems the impounded vehicle.

(b) The registered and legal owner of a vehicle that is removed and seized under subdivision (a) or their agents shall be provided the opportunity for a storage hearing to determine the validity of, or consider any mitigating circumstances attendant to, the storage, in accordance with Section 22852.

(c) Any period in which a vehicle is subjected to storage under this section shall be included as part of the period of impoundment ordered by the court under subdivision (a) of Section 14602.5.

(d) (1) An impounding agency shall release a vehicle to the registered owner or his or her agent prior to the end of 30 days' impoundment 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 a business establishment, including a parking service or repair garage.

(C) When the license of the driver was suspended or revoked for an offense other than those included in Article 2 (commencing with Section 13200) of Chapter 2 of Division 6 or Article 3 (commencing with Section 13350) of Chapter 2 of Division 6.

(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 a court.

(e) 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.

(f) 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 30 days' impoundment 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 security 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 fifteenth day of impoundment.

(3) The legal owner or the legal owner's agent presents foreclosure documents or an affidavit of repossession for the vehicle. The foreclosure documents or affidavit of repossession may be originals, photocopies, or facsimile copies, or may be transmitted electronically.

(g) (1) A legal owner or the legal owner's agent that obtains release of the vehicle pursuant to subdivision (f) shall not release the vehicle to the registered owner of the vehicle or any agents of the registered owner, unless the registered owner is a rental car agency, until after the termination of the 30-day 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 any administrative charges authorized under Section 22850.5 that were incurred by the legal owner in connection with obtaining custody of the vehicle.

(h) (1) A vehicle removed and seized under subdivision (a) shall be released to a rental car agency prior to the end of 30 days' impoundment 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 of the vehicle that was seized 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 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.

(i) 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, any administrative charges authorized under Section 22850.5, and any parking fines, penalties, and administrative fees incurred by the registered owner.

SEC. 6. Section 14607.6 of the Vehicle Code is amended to read:

14607.6. (a) Notwithstanding any other provision of law, and except as provided in this section, a motor vehicle is subject to forfeiture as a nuisance if it is driven on a highway in this state by a driver with a suspended or revoked license, or by an unlicensed driver, who is a registered owner of the vehicle at the time of impoundment and has a previous misdemeanor conviction for a violation of subdivision (a) of Section 12500 or Section 14601, 14601.1, 14601.2, 14601.3, 14601.4, or 14601.5.

(b) A peace officer shall not stop a vehicle for the sole reason of determining whether the driver is properly licensed.

(c) (1) If a driver is unable to produce a valid driver's license on the demand of a peace officer enforcing the provisions of this code, as required by subdivision (b) of Section 12951, the vehicle shall be impounded regardless of ownership, unless the peace officer is reasonably able, by other means, to verify that the driver is properly licensed. Prior to impounding a vehicle, a peace officer shall attempt to verify the license status of a driver who claims to be properly licensed but is unable to produce the license on demand of the peace officer.

(2) A peace officer shall not impound a vehicle pursuant to this subdivision if the license of the driver expired within the preceding 30 days and the driver would otherwise have been properly licensed.

(3) A peace officer may exercise discretion in a situation where the driver without a valid license is an employee driving a vehicle registered to the employer in the course of employment. A peace officer may also exercise discretion in a situation where the driver

without a valid license is the employee of a bona fide business establishment or is a person otherwise controlled by such an establishment and it reasonably appears that an owner of the vehicle, or an agent of the owner, relinquished possession of the vehicle to the business establishment solely for servicing or parking of the vehicle or other reasonably similar situations, and where the vehicle was not to be driven except as directly necessary to accomplish that business purpose. In this event, if the vehicle can be returned to or be retrieved by the business establishment or registered owner, the peace officer may release and not impound the vehicle.

(4) A registered or legal owner of record at the time of impoundment may request a hearing to determine the validity of the impoundment pursuant to subdivision (n).

(5) If the driver of a vehicle impounded pursuant to this subdivision was not a registered owner of the vehicle at the time of impoundment, or if the driver of the vehicle was a registered owner of the vehicle at the time of impoundment but the driver does not have a previous conviction for a violation of subdivision (a) of Section 12500 or Section 14601, 14601.1, 14601.2, 14601.3, 14601.4, or 14601.5, the vehicle shall be released pursuant to this code and is not subject to forfeiture.

(d) (1) This subdivision applies only if the driver of the vehicle is a registered owner of the vehicle at the time of impoundment. Except as provided in paragraph (5) of subdivision (c), if the driver of a vehicle impounded pursuant to subdivision (c) was a registered owner of the vehicle at the time of impoundment, the impounding agency shall authorize release of the vehicle if, within three days of impoundment, the driver of the vehicle at the time of impoundment presents his or her valid driver's license, including a valid temporary California driver's license or permit, to the impounding agency. The vehicle shall then be released to a registered owner of record at the time of impoundment, or an agent of that owner authorized in writing, upon payment of towing and storage charges related to the impoundment, and any administrative charges authorized by Section 22850.5, providing that the person claiming the vehicle is properly licensed and the vehicle is properly registered. A vehicle impounded pursuant to the circumstances described in paragraph (3) of subdivision (c) shall be released to a registered owner whether or not the driver of the vehicle at the time of impoundment presents a valid driver's license.

(2) If there is a community property interest in the vehicle impounded pursuant to subdivision (c), owned at the time of impoundment by a person other than the driver, and the vehicle is the only vehicle available to the driver's immediate family that may be operated with a class C driver's license, the vehicle shall be released to a registered owner or to the community property interest owner upon compliance with all of the following requirements:

(A) The registered owner or the community property interest owner requests release of the vehicle and the owner of the community property interest submits proof of that interest.

(B) The registered owner or the community property interest owner submits proof that he or she, or an authorized driver, is properly licensed and that the impounded vehicle is properly registered pursuant to this code.

(C) All towing and storage charges related to the impoundment and any administrative charges authorized pursuant to Section 22850.5 are paid.

(D) The registered owner or the community property interest owner signs a stipulated vehicle release agreement, as described in paragraph (3), in consideration for the nonforfeiture of the vehicle. This requirement applies only if the driver requests release of the vehicle.

(3) A stipulated vehicle release agreement shall provide for the consent of the signator to the automatic future forfeiture and transfer of title to the state of any vehicle registered to that person, if the vehicle is driven by a driver with a suspended or revoked license, or by an unlicensed driver. The agreement shall be in effect for only as long as it is noted on a driving record maintained by the department pursuant to Section 1806.1.

(4) The stipulated vehicle release agreement described in paragraph (3) shall be reported by the impounding agency to the department not later than 10 days after the day the agreement is signed.

(5) No vehicle shall be released pursuant to paragraph (2) if the driving record of a registered owner indicates that a prior stipulated vehicle release agreement was signed by that person.

(e) (1) The impounding agency, in the case of a vehicle that has not been redeemed pursuant to subdivision (d), or that has not been otherwise released, shall promptly ascertain from the department the names and addresses of all legal and registered owners of the vehicle.

(2) The impounding agency, within two days of impoundment, shall send a notice by certified mail, return receipt requested, to all legal and registered owners of the vehicle, at the addresses obtained from the department, informing them that the vehicle is subject to forfeiture and will be sold or otherwise disposed of pursuant to this section. The notice shall also include instructions for filing a claim with the district attorney, and the time limits for filing a claim. The notice shall also inform any legal owner of its right to conduct the sale pursuant to subdivision (g). If a registered owner was personally served at the time of impoundment with a notice containing all the information required to be provided by this paragraph, no further notice is required to be sent to a registered owner. However, a notice shall still be sent to the legal owners of the vehicle, if any. If notice was not sent to the legal owner within two working days, the

impounding agency shall not charge the legal owner for more than 15 days' impoundment when the legal owner redeems the impounded vehicle.

(3) No processing charges shall be imposed on a legal owner who redeems an impounded vehicle within 15 days of the impoundment of that vehicle. If no claims are filed and served within 15 days after the mailing of the notice in paragraph (2), or if no claims are filed and served within five days of personal service of the notice specified in paragraph (2), when no other mailed notice is required pursuant to paragraph (2), the district attorney shall prepare a written declaration of forfeiture of the vehicle to the state. A written declaration of forfeiture signed by the district attorney under this subdivision shall be deemed to provide good and sufficient title to the forfeited vehicle. A copy of the declaration shall be provided on request to any person informed of the pending forfeiture pursuant to paragraph (2). A claim that is filed and is later withdrawn by the claimant shall be deemed not to have been filed.

(4) If a claim is timely filed and served, then the district attorney shall file a petition of forfeiture with the appropriate justice, juvenile, or municipal court within 10 days of the receipt of the claim. The district attorney shall establish an expedited hearing date in accordance with instructions from the court, and the court shall hear the matter without delay. The court filing fee, not to exceed fifty dollars ($50), shall be paid by the claimant, but shall be reimbursed by the impounding agency if the claimant prevails. To the extent practicable, the civil and criminal cases shall be heard at the same time in an expedited, consolidated proceeding.

(5) The burden of proof in the civil case shall be on the prosecuting agency, by a preponderance of the evidence. All questions that may arise shall be decided and all other proceedings shall be conducted as in an ordinary civil action. A judgment of forfeiture does not require as a condition precedent the conviction of a defendant of an offense which made the vehicle subject to forfeiture. The filing of a claim within the time limits specified in paragraph (3) is considered a jurisdictional prerequisite for the availing of the action authorized by that paragraph.

(6) All right, title, and interest in the vehicle shall vest in the state upon commission of the act giving rise to the forfeiture.

(f) Any vehicle impounded that is not redeemed pursuant to subdivision (d) and is subsequently forfeited pursuant to this section shall be sold once an order of forfeiture is issued by the district attorney of the county of the impounding agency or a court, as the case may be, pursuant to subdivision (e).

(g) Any legal owner who is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state, or the agent of that legal owner, may take possession and conduct the sale of the forfeited vehicle if the legal owner or agent notifies the agency impounding the vehicle of

its intent to conduct the sale within 15 days of the mailing of the notice pursuant to subdivision (e). Sale of the vehicle after forfeiture pursuant to this subdivision may be conducted at the time, in the manner, and on the notice usually given for the sale of repossessed or surrendered vehicles. The proceeds of any sale conducted by or on behalf of the legal owner shall be disposed of as provided in subdivision (i). A notice pursuant to this subdivision may be presented in person, by certified mail, by facsimile transmission, or by electronic mail.

(h) If the legal owner or agent of the legal owner does not notify the agency impounding the vehicle of its intent to conduct the sale as provided in subdivision (g), the agency shall offer the forfeited vehicle for sale at public auction within 60 days of receiving title to the vehicle. Low value vehicles shall be disposed of pursuant to subdivision (k).

(i) The proceeds of a sale of a forfeited vehicle shall be disposed of in the following priority:

(1) To satisfy the towing and storage costs following impoundment, the costs of providing notice pursuant to subdivision (e), the costs of sale, and the unfunded costs of judicial proceedings, if any.

(2) To the legal owner in an amount to satisfy the indebtedness owed to the legal owner remaining as of the date of sale, including accrued interest or finance charges and delinquency charges, providing that the principal indebtedness was incurred prior to the date of impoundment.

(3) To the holder of any subordinate lien or encumbrance on the vehicle, other than a registered or legal owner, to satisfy any indebtedness so secured if written notification of demand is received before distribution of the proceeds is completed. The holder of a subordinate lien or encumbrance, if requested, shall furnish reasonable proof of its interest and, unless it does so upon request, is not entitled to distribution pursuant to this paragraph.

(4) To any other person, other than a registered or legal owner, who can reasonably establish an interest in the vehicle, including a community property interest, to the extent of his or her provable interest, if written notification is received before distribution of the proceeds is completed.

(5) Of the remaining proceeds, funds shall be made available to pay any local agency and court costs, that are reasonably related to the implementation of this section, that remain unsatisfied.

(6) Of the remaining proceeds, half shall be transferred to the Controller for deposit in the Vehicle Inspection and Repair Fund for the high-polluter repair assistance and removal program created by Article 9 (commencing with Section 44090) of Chapter 5 of Part 5 of Division 26 of the Health and Safety Code, and half shall be transferred to the general fund of the city or county of the impounding agency, or the city or county where the impoundment

occurred. A portion of the local funds may be used to establish a reward fund for persons coming forward with information leading to the arrest and conviction of hit and run drivers and to publicize the availability of the reward fund.

(j) The person conducting the sale shall disburse the proceeds of the sale as provided in subdivision (i) and shall provide a written accounting regarding the disposition to the impounding agency and, on request, to any person entitled to or claiming a share of the proceeds, within 15 days after the sale is conducted.

(k) If the vehicle to be sold pursuant to this section is not of the type that can readily be sold to the public generally, the vehicle shall be conveyed to a licensed dismantler or donated to an eleemosynary institution. License plates shall be removed from any vehicle conveyed to a dismantler pursuant to this subdivision.

(*l*) No vehicle shall be sold pursuant to this section if the impounding agency determines the vehicle to have been stolen. In this event, the vehicle may be claimed by the registered owner at any time after impoundment, providing the vehicle registration is current and the registered owner has no outstanding traffic violations or parking penalties on his or her driving record or on the registration record of any vehicle registered to the person. If the identity of the legal and registered owners of the vehicle cannot be reasonably ascertained, the vehicle may be sold.

(m) Any owner of a vehicle who suffers any loss due to the impoundment or forfeiture of any vehicle pursuant to this section may recover the amount of the loss from the unlicensed, suspended, or revoked driver. If possession of a vehicle has been tendered to a business establishment in good faith, and an unlicensed driver employed or otherwise directed by the business establishment is the cause of the impoundment of the vehicle, a registered owner of the impounded vehicle may recover damages for the loss of use of the vehicle from the business establishment.

(n) (1) The impounding agency, if requested to do so not later than 10 days after the date the vehicle was impounded, shall provide the opportunity for a poststorage hearing to determine the validity of the storage to the persons who were the registered and legal owners of the vehicle at the time of impoundment, except that the hearing shall be requested within three days after the date the vehicle was impounded if personal service was provided to a registered owner pursuant to paragraph (2) of subdivision (e) and no mailed notice is required.

(2) The poststorage hearing shall be conducted not later than two days after the date it was requested. The impounding agency may authorize its own officer or employee to conduct the hearing if the hearing officer is not the same person who directed the storage of the vehicle. Failure of either the registered or legal owner to request a hearing as provided in paragraph (1) or to attend a scheduled hearing shall satisfy the poststorage hearing requirement.

(3) The agency employing the person who directed the storage is responsible for the costs incurred for towing and storage if it is determined that the driver at the time of impoundment had a valid driver's license.

(o) As used in this section, "days" means workdays not including weekends and holidays.

(p) Charges for towing and storage for any vehicle impounded pursuant to this section shall not exceed the normal towing and storage rates for other vehicle towing and storage conducted by the impounding agency in the normal course of business.

(q) The Judicial Council and the Department of Justice may prescribe standard forms and procedures for implementation of this section to be used by all jurisdictions throughout the state.

(r) The impounding agency may act as the agent of the state in carrying out this section.

(s) No vehicle shall be impounded pursuant to this section if the driver has a valid license but the license is for a class of vehicle other than the vehicle operated by the driver.

(t) This section does not apply to vehicles subject to Sections 14608 and 14609, if there has been compliance with the procedures in those sections.

(u) As used in this section, "district attorney" includes a city attorney charged with the duty of prosecuting misdemeanor offenses.

(v) The agent of a legal owner acting pursuant to subdivision (g) shall be licensed, or exempt from licensure, pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code.

SEC. 7. Section 23596 of the Vehicle Code, as added by Section 84 of Chapter 118 of the Statutes of 1998, is amended to read:

23596. (a) (1) Upon its own motion or upon motion of the prosecutor in a criminal action for a violation of any of the following offenses, the court with jurisdiction over the offense, notwithstanding Section 86 of the Code of Civil Procedure and any other provision of law otherwise prescribing the jurisdiction of the court based upon the value of the property involved, may declare the motor vehicle driven by the defendant to be a nuisance if the defendant is the registered owner of the vehicle:

(A) A violation of Section 191.5 of, or paragraph (3) of subdivision (c) of Section 192 of, the Penal Code.

(B) A violation of Section 23152 which occurred within seven years of two or more separate offenses of Section 191.5 of, or paragraph (3) of subdivision (c) of Section 192 of, the Penal Code, or Section 23152 or 23153, or any combination thereof, which resulted in convictions.

(C) A violation of Section 23153 which occurred within seven years of one or more separate offenses of Section 191.5 of, or

paragraph (3) of subdivision (c) of Section 192 of, the Penal Code, or Section 23152 or 23153, which resulted in convictions.

(2) The court or the prosecutor shall give notice of the motion to the defendant, and the court shall hold a hearing before a motor vehicle may be declared a nuisance under this section.

(b) Except as provided in subdivision (g), upon the conviction of the defendant and at the time of pronouncement of sentence, the court with jurisdiction over the offense shall order any vehicle declared to be a nuisance pursuant to subdivision (a) to be sold. Any vehicle ordered to be sold pursuant to this subdivision shall be surrendered to the sheriff of the county or the chief of police of the city in which the violation occurred. The officer to whom the vehicle is surrendered shall promptly ascertain from the department the names and addresses of all legal and registered owners of the vehicle and, within five days of receiving that information, shall send by certified mail a notice to all legal and registered owners of the vehicle other than the defendant, at the addresses obtained from the department, informing them that the vehicle has been declared a nuisance and will be sold or otherwise disposed of pursuant to this section and of the approximate date and location of the sale or other disposition. The notice shall also inform any legal owner of its right to conduct the sale pursuant to subdivision (c).

(c) Any legal owner who is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed finance institution legally operating in this state, or the agent of that legal owner, may take possession and conduct the sale of the vehicle declared to be a nuisance if it notifies the officer to whom the vehicle is surrendered of its intent to conduct the sale within 15 days of the mailing of the notice pursuant to subdivision (b). Sale of the vehicle pursuant to this subdivision may be conducted at the time, in the manner, and on the notice usually given for the sale of repossessed or surrendered vehicles. The proceeds of any sale conducted by the legal owner shall be disposed of as provided in subdivision (e). A notice pursuant to this subdivision may be presented in person, by certified mail, by facsimile transmission, or by electronic mail. The agent of a legal owner acting pursuant to this subdivision shall be licensed, or exempt from licensure, pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code.

(d) If the legal owner or the agent of the legal owner does not notify the officer to whom the vehicle is surrendered of its intent to conduct the sale as provided in subdivision (c), the officer shall offer the vehicle for sale at public auction within 60 days of receiving the vehicle. At least 10 days but not more than 20 days prior to the sale, not counting the day of the sale, the officer shall give notice of the sale by advertising once in a newspaper of general circulation published in the city or county, as the case may be, in which the vehicle is located, which notice shall contain a description of the make, year, model, identification number, and license number of the vehicle and

the date, time, and location of the sale. For motorcycles, the engine number shall also be included. If there is no newspaper of general circulation published in the county, notice shall be given by posting a notice of sale containing the information required by this subdivision in three of the most public places in the city or county in which the vehicle is located, and at the place where the vehicle is to be sold, for 10 consecutive days prior to and including the day of the sale.

(e) The proceeds of a sale conducted pursuant to this section shall be disposed of in the following priority:

(1) To satisfy the costs of the sale, including costs incurred with respect to the taking and keeping of the vehicle pending sale.

(2) To the legal owner in an amount to satisfy the indebtedness owed to the legal owner remaining as of the date of the sale, including accrued interest or finance charges and delinquency charges.

(3) To the holder of any subordinate lien or encumbrance on the vehicle to satisfy any indebtedness so secured if written notification of demand is received before distribution of the proceeds is completed. The holder of a subordinate lien or encumbrance, if requested, shall reasonably furnish reasonable proof of its interest and, unless it does so on request, is not entitled to distribution pursuant to this paragraph.

(4) To any other person who can establish an interest in the vehicle, including a community property interest, to the extent of his or her provable interest.

(5) If the vehicle was forfeited as a result of a felony violation of Section 191.5 of the Penal Code, or of Section 23153 that resulted in serious bodily injury to any person other than the defendant, the balance, if any, to the city or county in which the violation occurred, to be deposited in its general fund.

(6) Except as provided in paragraph (5), the balance, if any, to the city or county in which the violation occurred, to be expended for community-based adolescent substance abuse treatment services.

The person conducting the sale shall disburse the proceeds of the sale as provided in this subdivision, and provide a written accounting regarding the disposition to all persons entitled to or claiming a share of the proceeds, within 15 days after the sale is conducted.

(f) If the vehicle to be sold under this section is not of the type that can readily be sold to the public generally, the vehicle shall be destroyed or donated to an eleemosynary institution.

(g) No vehicle shall be sold pursuant to this section in either of the following circumstances:

(1) The vehicle is stolen, unless the identity of the legal and registered owners of the vehicle cannot be reasonably ascertained.

(2) The vehicle is owned by another, or there is a community property interest in the vehicle owned by a person other than the defendant and the vehicle is the only vehicle available to the

defendant's immediate family that may be operated on the highway with a class 3 or class 4 driver's license.

(h) The Legislature finds and declares it to be the public policy of this state that no policy of insurance shall afford benefits that would alleviate the financial detriment suffered by any person as a direct or indirect result of a confiscation of a vehicle pursuant to this section.

CHAPTER 583

An act to amend Sections 64, 465, 834, 995.2, and 5802 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. Section 64 of the Revenue and Taxation Code is amended to read:

64. (a) Except as provided in subdivision (i) of Section 61 and subdivisions (c) and (d) of this section, the purchase or transfer of ownership interests in legal entities, such as corporate stock or partnership or limited liability company interests, does not constitute a transfer of the real property of the legal entity. This subdivision is applicable to the purchase or transfer of ownership interests in a partnership without regard to whether it is a continuing or a dissolved partnership.

(b) Any corporate reorganization, where all of the corporations involved are members of an affiliated group, and that qualifies as a reorganization under Section 368 of the United States Internal Revenue Code and that is accepted as a nontaxable event by similar California statutes, or any transfer of real property among members of an affiliated group, or any reorganization of farm credit institutions pursuant to the federal Farm Credit Act of 1971 (Public Law 92-181), as amended, shall not be a change of ownership. The taxpayer shall furnish proof, under penalty of perjury, to the assessor that the transfer meets the requirements of this subdivision.

For purposes of this subdivision "affiliated group" means one or more chains of corporations connected through stock ownership with a common parent corporation if both of the following conditions are met:

(1) One hundred percent of the voting stock, exclusive of any share owned by directors, of each of the corporations, except the parent corporation, is owned by one or more of the other corporations.

(2) The common parent corporation owns, directly, 100 percent of the voting stock, exclusive of any shares owned by directors, of at least one of the other corporations.

(c) (1) When a corporation, partnership, limited liability company, other legal entity, or any other person obtains control through direct or indirect ownership or control of more than 50 percent of the voting stock of any corporation, or obtains a majority ownership interest in any partnership, limited liability company, or other legal entity through the purchase or transfer of corporate stock, partnership, or limited liability company interest, or ownership interests in other legal entities, including any purchase or transfer of 50 percent or less of the ownership interest through which control or a majority ownership interest is obtained, the purchase or transfer of that stock or other interest shall be a change of ownership of the real property owned by the corporation, partnership, limited liability company, or other legal entity in which the controlling interest is obtained.

(2) On or after January 1, 1996, when an owner of a majority ownership interest in any partnership obtains all of the remaining ownership interests in that partnership or otherwise becomes the sole partner, the purchase or transfer of the minority interests, subject to the appropriate application of the step-transaction doctrine, shall not be a change in ownership of the real property owned by the partnership.

(d) If property is transferred on or after March 1, 1975, to a legal entity in a transaction excluded from change in ownership by paragraph (2) of subdivision (a) of Section 62, then the persons holding ownership interests in that legal entity immediately after the transfer shall be considered the "original coowners." Whenever shares or other ownership interests representing cumulatively more than 50 percent of the total interests in the entity are transferred by any of the original coowners in one or more transactions, a change in ownership of that real property owned by the legal entity shall have occurred, and the property that was previously excluded from change in ownership under the provisions of paragraph (2) of subdivision (a) of Section 62 shall be reappraised.

The date of reappraisal shall be the date of the transfer of the ownership interest representing individually or cumulatively more than 50 percent of the interests in the entity.

A transfer of shares or other ownership interests that results in a change in control of a corporation, partnership, limited liability company, or any other legal entity is subject to reappraisal as provided in subdivision (c) rather than this subdivision.

(e) In order to assist in the determination of whether a change of ownership has occurred under subdivisions (c) and (d), the Franchise Tax Board shall include a question in substantially the following form on returns for partnerships, banks and corporations (except tax-exempt organizations):

If the corporation (or partnership or limited liability company) owns real property in California, has cumulatively more than 50 percent of the voting stock (or more than 50 percent of total interest in both partnership or limited liability company capital and partnership or limited liability company profits) (1) been transferred by the corporation (or partnership or limited liability company) since March 1, 1975, or (2) been acquired by another legal entity or person during the year? (See instructions.)

If the entity answers "yes" to (1) or (2) in the above question, then the Franchise Tax Board shall furnish the names and addresses of that entity and of the stock or partnership or limited liability company ownership interest transferees to the State Board of Equalization.

SEC. 2. Section 465 of the Revenue and Taxation Code is amended to read:

465. The assessor may destroy any document containing information obtained from taxpayers when six years have elapsed since the lien date for the taxes for which that information was obtained. Those documents may be destroyed when three years have elapsed since the lien date if the documents have been microfilmed, microfiched, imaged, or otherwise preserved on a medium that provides access to the documents.

SEC. 3. Section 834 of the Revenue and Taxation Code is amended to read:

834. The board may destroy any documents containing information obtained from taxpayers when six years have elapsed since the lien date for the taxes for which that information was obtained. Those documents may be destroyed when three years have elapsed since the lien date if the documents have been microfilmed, microfiched, imaged, or otherwise preserved on a medium that provides access to the documents.

SEC. 4. Section 995.2 of the Revenue and Taxation Code is amended to read:

995.2. The term "basic operational program," as used in Section 995 means a computer program that is fundamental and necessary to the functioning of a computer. A basic operational program is that part of an operating system including supervisors, monitors, executives and control or master programs that consist of the control program elements of that system.

For purposes of this section the terms "control program" and "basic operational program" are interchangeable. A control program, as opposed to a processing program, controls the operation of a computer by managing the allocation of all system resources, including the central processing unit, main storage, input/output devices and processing programs. A processing program is used to develop and implement the specific applications that the computer is to perform. Its operation is possible only through the facilities provided by the control program. It is not in itself fundamental and necessary to the functioning of a computer.

Excluded from the term "basic operational program" are processing programs, which consist of language translators, including but not limited to, assemblers and compilers; service programs, including but not limited to, data set utilities, sort/merge utilities, and emulators; data management systems, also known as generalized file-processing software; and application programs including but not limited to payroll, inventory control and production control. Also excluded from the term "basic operational program" are programs or parts of programs developed for or by a user if they were developed solely for the solution of an individual operational problem of the user.

A control program, as used in this section, includes functions as: selection, assignment and control of input and output devices; loading of programs, including selection of programs from a system resident library; handling the steps necessary to accomplish job-to-job transition; controlling the allocation of memory; controlling concurrent operation of multiple programs or computers; and protecting data from being inadvertently destroyed as a result of operator program error.

SEC. 5. Section 5802 of the Revenue and Taxation Code, as amended by Section 14 of Chapter 1222 of the Statutes of 1994, is amended to read:

5802. (a) Except as provided in subdivisions (b) and (c), "base year value" as used in this part means the full cash value of a manufactured home on the date the manufactured home is purchased or changes ownership. If the manufactured home undergoes any new construction after it is purchased or changes ownership, the base year value of the new construction is its full cash value on the date on which the new construction is completed, and if uncompleted, on the lien date.

(b) The base year value of a manufactured home for which the license fee is delinquent shall be its full cash value on the lien date for the fiscal year in which it is first enrolled.

(c) The base year value of a manufactured home converted pursuant to Section 18119 of the Health and Safety Code from taxation under Part 5 (commencing with Section 10701) of Division 2 to taxation under this part shall be its full cash value on the lien date for the fiscal year in which that manufactured home is first enrolled.

(d) Notwithstanding any other provision of law, the assessor shall determine the base year value of a manufactured home, located in a resident-owned mobilehome park or a rental park in the process of being changed to resident ownership, that is converted to property taxation by the registered owner pursuant to Section 18555 of the Health and Safety Code, so that the property taxes levied, after adjustment for any applicable exemption, shall be the same amount as the vehicle license fee that was imposed for the registration year in which the home was converted to property taxation.

(e) This section shall remain in effect until January 1, 1999, and on that date is repealed.

SEC. 6. Section 5802 of the Revenue and Taxation Code, as amended by Section 15 of Chapter 1222 of the Statutes of 1994, is amended to read:

5802. (a) Except as provided in subdivisions (b) and (c), "base year value" as used in this part means the full cash value of a manufactured home on the date the manufactured home is purchased or changes ownership. If the manufactured home undergoes any new construction after it is purchased or changes ownership, the base year value of the new construction is its full cash value on the date on which the new construction is completed, and if uncompleted, on the lien date.

(b) The base year value of a manufactured home for which the license fee is delinquent shall be its full cash value on the lien date for the fiscal year in which it is first enrolled.

(c) The base year value of a manufactured home converted pursuant to Section 18119 of the Health and Safety Code from taxation under Part 5 (commencing with Section 10701) of Division 2 to taxation under this part shall be its full cash value on the lien date for the fiscal year in which that manufactured home is first enrolled.

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

CHAPTER 584

An act to amend Sections 29759, 29760, 29761.5, 29762, 29763, 29763.5, 29764, 29767, 29770, 29771, 29772, and 29780 of, to add Section 29756.5 to, and to repeal Section 29729 of, the Public Resources Code, relating to the Sacramento-San Joaquin Delta.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. Section 29729 of the Public Resources Code is repealed.

SEC. 2. Section 29756.5 is added to the Public Resources Code, to read:

29756.5. The commission may act as the facilitating agency for the implementation of any joint habitat restoration or enhancement programs located within the primary zone of the delta.

SEC. 2.5. Section 29759 of the Public Resources Code is amended to read:

29759. The commission shall be abolished as of January 1, 2010, and, if provided for by the Legislature, a successor agency shall administer this division on and after that date.

SEC. 2.7. Section 29760 of the Public Resources Code is amended to read:

29760. (a) Not later than October 1, 1994, the commission shall prepare and adopt, by a majority vote of the membership of the commission, and thereafter review and maintain, a comprehensive long-term resource management plan for land uses within the primary zone of the delta. The resource management plan shall consist of the map of the primary zone and text or texts setting forth a description of the needs and goals for the delta and a statement of the policies, standards, and elements of the resource management plan.

(b) The resource management plan shall meet the following requirements:

(1) Protect and preserve the cultural values and economic vitality that reflect the history, natural heritage, and human resources of the delta.

(2) Conserve and protect the quality of renewable resources.

(3) Preserve and protect agricultural viability.

(4) Restore, improve, and manage levee systems by promoting strategies, including, but not limited to, methods and procedures which advance the adoption and implementation of coordinated and uniform standards among governmental agencies for the maintenance, repair, and construction of both public and private levees.

(5) Preserve and protect delta dependent fisheries and their habitat.

(6) Preserve and protect riparian and wetlands habitat, and promote and encourage a net increase in both the acreage and values of those resources on public lands and through voluntary cooperative arrangements with private property owners.

(7) Preserve and protect the water quality of the delta, both for instream purposes and for human use and consumption.

(8) Preserve and protect open-space and outdoor recreational opportunities.

(9) Preserve and protect private property interests from trespassing and vandalism.

(10) Preserve and protect opportunities for controlled public access and use of public lands and waterways consistent with the protection of natural resources and private property interests.

(11) Preserve, protect, and maintain navigation.

(12) Protect the delta from any development that results in any significant loss of habitat or agricultural land.

(13) Promote strategies for the funding, acquisition, and maintenance of voluntary cooperative arrangements, such as conservation easements, between property owners and conservation groups that protect wildlife habitat and agricultural land, while not impairing the integrity of levees.

(14) Permit water reservoir and habitat development that is compatible with other uses.

(c) The resource management plan shall not supersede the authority of local governments over areas within the secondary zone.

(d) To facilitate, in part, the requirements specified in paragraphs (8), (9), (10), and (11) of subdivision (b), the commission shall include in the resource management plan, in consultation with all law enforcement agencies having jurisdiction in the delta, a strategy for the implementation of a coordinated marine patrol system throughout the delta that will improve law enforcement and coordinate the use of resources by all jurisdictions to ensure an adequate level of public safety. The strategic plan shall identify resources to implement that coordination. The commission shall have no authority to abrogate the existing authority of any law enforcement agency.

(e) To the extent that any of the requirements specified in this section are in conflict, nothing in this division shall deny the right of the landowner to continue the agricultural use of the land.

SEC. 3. Section 29761.5 of the Public Resources Code is amended to read:

29761.5. Not later than January 7, 1995, the commission shall transmit copies of the resource management plan to the Governor. Copies of the resource management plan shall be made available, upon request, to Members of the Legislature.

SEC. 4. Section 29762 of the Public Resources Code is amended to read:

29762. The commission shall adopt, by a majority vote of the membership of the commission, the resource management plan after at least three public hearings, with at least one hearing held in a city in the north delta, the south delta, and the west delta.

SEC. 5. Section 29763 of the Public Resources Code is amended to read:

29763. Within 180 days from the date of the adoption of the resource management plan or any amendments by the commission, all local governments shall submit to the commission proposed amendments that will cause their general plans to be consistent with the criteria in Section 29763.5 with respect to land located within the primary zone.

SEC. 6. Section 29763.5 of the Public Resources Code is amended to read:

29763.5. The commission shall act on proposed local government general plan amendments within 60 days from the date of submittal of the proposed amendments. The commission shall approve the proposed general plan amendments by a majority vote of the commission membership, with regard to lands within the primary zone, only after making all of the following written findings as to the potential impact of the proposed amendments, to the extent that those impacts will not increase requirements or restrictions upon

agricultural practices in the primary zone, based on substantial evidence in the record:

(a) The general plan, and any development approved or proposed that is consistent with the general plan, are consistent with the resource management plan.

(b) The general plan, and any development approved or proposed that is consistent with the general plan, will not result in wetland or riparian loss.

(c) The general plan, and development approved or proposed that is consistent with the general plan, will not result in the degradation of water quality.

(d) The general plan, and any development approved or proposed that is consistent with the general plan, will not result in increased nonpoint source pollution.

(e) The general plan, and any development approved or proposed that is consistent with the general plan, will not result in the degradation or reduction of Pacific Flyway habitat.

(f) The general plan, and any development approved or proposed that is consistent with the general plan, will not result in reduced public access, provided the access does not infringe on private property rights.

(g) The general plan, and any development approved or proposed that is consistent with the general plan, will not expose the public to increased flood hazard.

(h) The general plan, and any development approved or proposed that is consistent with the general plan, will not adversely impact agricultural lands or increase the potential for vandalism, trespass, or the creation of public or private nuisances on public or private land.

(i) The general plan, and any development approved or proposed that is consistent with the general plan, will not result in the degradation or impairment of levee integrity.

(j) The general plan, and any development approved or proposed that is consistent with the general plan, will not adversely impact navigation.

(k) The general plan, and any development approved or proposed that is consistent with the general plan, will not result in any increased requirements or restrictions upon agricultural practices in the primary zone.

SEC. 7. Section 29764 of the Public Resources Code is amended to read:

29764. This division does not confer any permitting authority upon the commission or require any local government to conform their general plan, or land use entitlement decisions, to the resource management plan, except with regard to lands within the primary zone. The resource management plan does not preempt local government general plans for lands within the secondary zone.

SEC. 8. Section 29767 of the Public Resources Code is amended to read:

29767. The commission may not exercise the power of eminent domain in implementing the resource management plan, unless requested by the landowner.

SEC. 9. Section 29770 of the Public Resources Code is amended to read:

29770. (a) Any person who is aggrieved by any action taken by a local government or other local agency in implementing the resource management plan, or otherwise taken pursuant to this division, may file an appeal with the commission. The ground for an appeal and the commission consideration of an appeal shall be that an action, as to land located exclusively within the primary zone, is inconsistent with the resource management plan, the approved portions of local government general plans that implement the resource management plan, or this division. The appeal shall be heard by the commission within 60 days from the date of the filing of the appeal, unless the commission, either itself or by delegation to the executive director, determines that the issue raised on appeal is not within the commission's jurisdiction or does not raise an appealable issue.

(b) The commission shall, by regulation, adopt administrative procedures governing those appeals.

SEC. 10. Section 29771 of the Public Resources Code is amended to read:

29771. After a hearing on an appealed action, the commission shall either deny the appeal or remand the matter to the local government or local agency for reconsideration, after making specific findings. Upon remand, the local government or local agency may modify the appealed action and resubmit the matter for review to the commission. A proposed action appealed pursuant to this section shall not be effective until the commission has adopted written findings, based on substantial evidence in the record, that the action is consistent with the resource management plan, the approved portions of local government general plans that implement the resource management plan, and this division.

SEC. 11. Section 29772 of the Public Resources Code is amended to read:

29772. An aggrieved person may seek judicial review of any action taken by the commission in adopting the resource management plan or any action taken by a local government or other local agency that is appealable pursuant to subdivision (a) of Section 29770, by filing a petition for writ of mandate in accordance with Section 1094.5 of the Code of Civil Procedure within 60 days from the date that the commission action was taken or, if appealed to the commission, within 60 days from the final decision of the commission on the appeal.

SEC. 12. Section 29780 of the Public Resources Code is amended to read:

29780. On January 1 of each year, the commission shall submit to the Governor and the Legislature a report describing the progress that has been made in achieving the objectives of this division. The report shall include, but not be limited to, all of the following information:

(a) An evaluation of the effectiveness of the resource management plan in preserving agricultural lands, restoring delta habitat, improving levee protection and water quality, providing increased public access and recreational opportunities, and in undertaking other functions prescribed in this division.

(b) An update of the resource management plan, using baseline conditions set forth in the original resource management plan.

(c) The status of the environmental thresholds established by the commission in the original resource management plan.

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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

CHAPTER 585

An act to amend Section 779.14 of the Insurance Code, relating to insurance.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. Section 779.14 of the Insurance Code is amended to read:

779.14. (a) Each individual policy, group certificate, or notice of proposed insurance shall provide that in the event of termination of the insurance prior to the scheduled maturity date of the indebtedness, any refund of an amount paid by the debtor for insurance shall be paid promptly to the person entitled thereto or credited to the next payment or payments due on the indebtedness. However, the commissioner shall prescribe a minimum refund and no refund that would be less than that minimum need be made. The

formula to be used in computing that refund shall be filed with and approved by the commissioner.

(b) An individual policy or group certificate of credit life insurance or of credit disability insurance or a combination thereof, or a notice of proposed insurance, shall allow an insured to rescind the insurance within 30 days of receipt of the policy or certificate or notice of proposed insurance issued pursuant to Section 779.7 and to receive a full refund, or credit if financed, of any premium that has been paid. The right to rescind shall be disclosed on the face of the individual policy, group certificate, or notice of proposed insurance in at least 14-point type and shall include the disclosure of the department's toll-free telephone number and other disclosures set forth in Section 510.

(c) No statement, disclosure, or notice made in accordance with Section 779.14 or 779.35 shall be construed to cause the policy forms, certificates of insurance, or notices of proposed insurance, by themselves, to be considered as nonstandard forms as described in Article 6.9 (commencing with Section 2249) of Subchapter 2 of Chapter 5 of Title 10 of the California Code of Regulations.

(d) This section applies to all policies issued or delivered in this state on or after January 1, 1999. All policies subject to this section that are in effect on January 1, 1999, shall be construed to be in compliance with this section, and any provision in any policy which is in conflict with this section shall be of no force or effect.

CHAPTER 586

An act to amend Section 33492.127 of, and to add Sections 33492.21 and 33492.22 to, the Health and Safety Code, relating to redevelopment, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. Section 33492.21 is added to the Health and Safety Code, to read:

33492.21. (a) Notwithstanding the time limit in subdivision (b) of Section 33492.18, the City Council of the City of San Diego shall certify an environmental impact report for the Naval Training Center Redevelopment Plan within 30 months after the effective date of the ordinance adopting that redevelopment plan.

(b) The following provisions shall apply to the approval of projects that implement a redevelopment plan authorized by this article:

(1) For 18 months after the effective date of the ordinance adopting the redevelopment plan, or until the certification of an environmental impact report for the redevelopment plan if the report is certified during that 18-month period, subdivision (c) of Section 33492.18 shall apply.

(2) If an environmental impact report for the redevelopment plan is not certified within 18 months after the effective date of the ordinance adopting the plan, then during the succeeding 12 months or until the certification of an environmental impact report if the report is certified during that 12-month period, no project, as defined in Section 21065 of the Public Resources Code, that implements the redevelopment plan shall be approved by the agency or the community unless any of the following occurs:

(A) The agency or the community has approved a negative declaration or certified an environmental impact report, or has certified a subsequent or supplemental environmental impact report, for the project before the expiration of the 18-month period provided in Section 33492.18.

(B) The agency or the community has certified a subsequent or supplemental environmental impact report for the project where the environmental impact report for the project was certified before the expiration of the 18-month period provided in Section 33492.18.

(C) The agency or the community complies with Chapter 4.5 (commencing with Section 21156) of Division 13 of the Public Resources Code for the subsequent projects described in a master environmental impact report as being within the scope of the report, and that master environmental impact report was certified before the expiration of the 18-month period provided in Section 33492.18.

(D) The project is categorically exempt pursuant to Article 19 (commencing with Section 15300) of Chapter 3 of Division 6 of Title 14 of the California Code of Regulations.

SEC. 2. Section 33492.22 is added to the Health and Safety Code, to read:

33492.22. (a) Notwithstanding the time limit in subdivision (b) of Section 33492.18, the Planning Commission and the Redevelopment Agency Commission of the City and County of San Francisco shall certify an environmental impact report for the Hunter's Point Shipyard Redevelopment Plan within 30 months after the effective date of the ordinance adopting the redevelopment plan.

(b) The following provisions shall apply to the approval of projects that implement a redevelopment plan authorized by this article:

(1) For 18 months after the effective date of the ordinance adopting the redevelopment plan, or until the certification of an environmental impact report for the redevelopment plan if the report is certified during that 18-month period, subdivision (c) of Section 33492.18 shall apply.

(2) If an environmental impact report for the redevelopment plan is not certified within 18 months after the effective date of the

ordinance adopting the plan, then during the succeeding 12 months or until the certification of an environmental impact report if the report is certified during that 12-month period, no project, as defined in Section 21065 of the Public Resources Code, that implements the redevelopment plan shall be approved by the agency or the community unless any of the following occurs:

(A) The agency or the community has approved a negative declaration or certified an environmental impact report, or has certified a subsequent or supplemental environmental impact report, for the project before the expiration of the 18-month period provided in Section 33492.18.

(B) The agency or the community has certified a subsequent or supplemental environmental impact report for the project where the environmental impact report for the project was certified before the expiration of the 18-month period provided in Section 33492.18.

(C) The agency or the community complies with Chapter 4.5 (commencing with Section 21156) of Division 13 of the Public Resources Code for subsequent projects described in a master environmental impact report as being within the scope of the report, and that master environmental impact report was certified before the expiration of the 18-month period provided in Section 33492.18.

(D) The project is categorically exempt pursuant to Article 19 (commencing with Section 15300) of Chapter 3 of Division 6 of Title 14 of the California Code of Regulations.

SEC. 3. Section 33492.127 of the Health and Safety Code is amended to read:

33492.127. (a) A redevelopment plan covering all or part of the lands of the Alameda Naval Air Station and the Fleet Industrial Supply Center Redevelopment Project may be adopted pursuant to Article 1 (commencing with Section 33492), provided that the project area shall not include territory outside the boundaries of the Alameda Naval Air Station and the Fleet Industrial Supply Center.

(b) Notwithstanding the time limit in subdivision (b) of Section 33492.18, the agency or the community shall certify an environmental impact report for the redevelopment plan adopted pursuant to this section within 30 months after the effective date of the ordinance adopting the redevelopment plan.

(c) The following provisions shall apply to the approval of projects that implement a redevelopment plan authorized by this article:

(1) For 18 months after the effective date of the ordinance adopting the redevelopment plan, or until the certification of an environmental impact report for the redevelopment plan if the report is certified during that 18-month period, subdivision (c) of Section 33492.18 shall apply.

(2) If an environmental impact report for the redevelopment plan is not certified within 18 months after the effective date of the ordinance adopting the plan, then during the succeeding 12 months or until the certification of an environmental impact report if the

report is certified during that 12-month period, no project, as defined in Section 21065 of the Public Resources Code, that implements the redevelopment plan shall be approved by the agency or the community unless any of the following occurs:

(A) The agency or the community has approved a negative declaration or certified an environmental impact report, or has certified a subsequent or supplemental environmental impact report, for the project before the expiration of the 18-month period provided in Section 33492.18.

(B) The agency or the community has certified a subsequent or supplemental environmental impact report for the project where the environmental impact report for the project was certified before the expiration of the 18-month period provided in Section 33492.18.

(C) The agency or the community complies with Chapter 4.5 (commencing with Section 21156) of Division 13 of the Public Resources Code for subsequent projects described in a master environmental impact report as being within the scope of the report, and that master environmental impact report was certified before the expiration of the 18-month period provided in Section 33492.18.

(D) The project is categorically exempt pursuant to Article 19 (commencing with Section 15300) of Chapter 3 of Division 6 of Title 14 of the California Code of Regulations.

SEC. 4. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances of the City of San Diego, the City and County of San Francisco, and the City of Alameda and their community redevelopment agencies. The facts constituting the special circumstances are as follows:

Unforeseen delays by federal agencies in preparing environmental documents, or preparation of inadequate environmental documents by federal agencies, have delayed the environmental impact reports for redevelopment plans. Accordingly, these special circumstances require a special extension of the deadline for certifying the environmental impact reports for the Naval Training Center Redevelopment Plan, the Hunter's Point Shipyard Redevelopment Plan, and the redevelopment plan covering all or a part of the lands of the Alameda Naval Air Station and the Fleet Industrial Supply Center Redevelopment Project.

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 provide for an extension for the deadline for certification of the environmental impact reports for the Naval Training Center Redevelopment Plan adopted by the City Council of San Diego, the Hunter's Point Shipyard Redevelopment Plan adopted by the Planning Commission and the Redevelopment

Agency Commission of the City and County of San Francisco, and the redevelopment plan covering all or a part of the lands of the Alameda Naval Air Station and the Fleet Industrial Supply Center Redevelopment Project adopted by the redevelopment agency of the City of Alameda, it is necessary that this act go into immediate effect.

CHAPTER 587

An act to amend, repeal, and add Section 2033.5 of the Code of Civil Procedure, and to amend Sections 2085.5 and 11177.2 of, and to amend, repeal, and add Sections 987, 1202.4, and 1214 of, the Penal Code, relating to criminal restitution.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. Section 2033.5 of the Code of Civil Procedure is amended to read:

2033.5. The Judicial Council shall develop and approve official form interrogatories and requests for admission of the genuineness of any relevant documents or of the truth of any relevant matters of fact in any civil action in a state court based on personal injury, property damage, wrongful death, unlawful detainer, breach of contract, family law, or fraud. Use of the approved form interrogatories and requests for admission shall be optional.

In developing the form interrogatories and requests for admission required by this section, the Judicial Council shall consult with a representative advisory committee which shall include, but not be limited to, representatives of the plaintiff's bar, the defense bar, the public interest bar, court administrators, and the public. The form interrogatories and requests for admission shall be drafted in nontechnical language and shall be made available through the office of the clerk of the appropriate trial court.

The Judicial Council also shall promulgate any necessary rules to govern the use of the form interrogatories and requests for admission.

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. 2. Section 2033.5 is added to the Code of Civil Procedure, to read:

2033.5. (a) The Judicial Council shall develop and approve official form interrogatories and requests for admission of the genuineness of any relevant documents or of the truth of any relevant matters of fact in any civil action in a state court based on personal

injury, property damage, wrongful death, unlawful detainer, breach of contract, family law, or fraud. Use of the approved form interrogatories and requests for admission shall be optional.

(b) In developing the form interrogatories and requests for admission required by this section, the Judicial Council shall consult with a representative advisory committee which shall include, but not be limited to, representatives of the plaintiff's bar, the defense bar, the public interest bar, court administrators, and the public. The form interrogatories and requests for admission shall be drafted in nontechnical language and shall be made available through the office of the clerk of the appropriate trial court.

(c) The Judicial Council also shall promulgate any necessary rules to govern the use of the form interrogatories and requests for admission.

(d) The Judicial Council shall develop and approve official form interrogatories for use by a victim who has not received complete payment of a restitution order made pursuant to Section 1202.4 of the Penal Code.

(e) Notwithstanding whether a victim initiates or maintains an action to satisfy the unpaid restitution order, a victim may propound the form interrogatories approved pursuant to this section once each calendar year. The defendant subject to the restitution order shall, in responding to the interrogatories propounded, provide current information regarding the nature, extent, and location of any assets, income, and liabilities in which the defendant claims a present or future interest.

(f) This section shall become operative on January 1, 2000.

SEC. 3. Section 987 of the Penal Code is amended to read:

987. (a) In a noncapital case, if the defendant appears for arraignment without counsel, he or she shall be informed by the court that it is his or her right to have counsel before being arraigned, and shall be asked if he or she desires the assistance of counsel. If he or she desires and is unable to employ counsel the court shall assign counsel to defend him or her.

(b) In a capital case, if the defendant appears for arraignment without counsel, the court shall inform him or her that he or she shall be represented by counsel at all stages of the preliminary and trial proceedings and that the representation is at his or her expense if he or she is able to employ counsel or at public expense if he or she is unable to employ counsel, inquire of him or her whether he or she is able to employ counsel and, if so, whether he or she desires to employ counsel of his or her choice or to have counsel assigned, and allow him or her a reasonable time to send for his or her chosen or assigned counsel. If the defendant is unable to employ counsel, the court shall assign counsel to defend him or her. If the defendant is able to employ counsel and either refuses to employ counsel or appears without counsel after having had a reasonable time to employ counsel, the court shall assign counsel.

The court shall at the first opportunity inform the defendant's trial counsel, whether retained by the defendant or court-appointed, of the additional duties imposed upon trial counsel in any capital case as set forth in paragraph (1) of subdivision (b) of Section 1240.1.

(c) In order to assist the court in determining whether a defendant is able to employ counsel in any case, the court may require a defendant to file a financial statement or other financial information under penalty of perjury with the court or, in its discretion, order a defendant to appear before a county officer designated by the court to make an inquiry into the ability of the defendant to employ his or her own counsel. If a county officer is designated, the county officer shall provide to the court a written recommendation and the reason or reasons in support of the recommendation. The determination by the court shall be made on the record. The financial statement or other financial information obtained from the defendant shall be confidential and privileged and shall not be admissible in evidence in any criminal proceeding except the prosecution of an alleged offense of perjury based upon false material contained in the financial statement. The financial statement shall be made available to the prosecution only for purposes of investigation of an alleged offense of perjury based upon false material contained in the financial statement at the conclusion of the proceedings for which the financial statement was required to be submitted. The financial statement and other financial information obtained from the defendant shall not be confidential and privileged in a proceeding under Section 987.8.

(d) In a capital case, the court may appoint an additional attorney as a cocounsel upon a written request of the first attorney appointed. The request shall be supported by an affidavit of the first attorney setting forth in detail the reasons why a second attorney should be appointed. Any affidavit filed with the court shall be confidential and privileged. The court shall appoint a second attorney when it is convinced by the reasons stated in the affidavit that the appointment is necessary to provide the defendant with effective representation. If the request is denied, the court shall state on the record its reasons for denial of the request.

(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. 4. Section 987 is added to the Penal Code, to read:

987. (a) In a noncapital case, if the defendant appears for arraignment without counsel, he or she shall be informed by the court that it is his or her right to have counsel before being arraigned, and shall be asked if he or she desires the assistance of counsel. If he or she desires and is unable to employ counsel the court shall assign counsel to defend him or her.

(b) In a capital case, if the defendant appears for arraignment without counsel, the court shall inform him or her that he or she shall

be represented by counsel at all stages of the preliminary and trial proceedings and that the representation is at his or her expense if he or she is able to employ counsel or at public expense if he or she is unable to employ counsel, inquire of him or her whether he or she is able to employ counsel and, if so, whether he or she desires to employ counsel of his or her choice or to have counsel assigned, and allow him or her a reasonable time to send for his or her chosen or assigned counsel. If the defendant is unable to employ counsel, the court shall assign counsel to defend him or her. If the defendant is able to employ counsel and either refuses to employ counsel or appears without counsel after having had a reasonable time to employ counsel, the court shall assign counsel.

The court shall at the first opportunity inform the defendant's trial counsel, whether retained by the defendant or court-appointed, of the additional duties imposed upon trial counsel in any capital case as set forth in paragraph (1) of subdivision (b) of Section 1240.1.

(c) In order to assist the court in determining whether a defendant is able to employ counsel in any case, the court may require a defendant to file a financial statement or other financial information under penalty of perjury with the court or, in its discretion, order a defendant to appear before a county officer designated by the court to make an inquiry into the ability of the defendant to employ his or her own counsel. If a county officer is designated, the county officer shall provide to the court a written recommendation and the reason or reasons in support of the recommendation. The determination by the court shall be made on the record. Except as provided in Section 1214, the financial statement or other financial information obtained from the defendant shall be confidential and privileged and shall not be admissible in evidence in any criminal proceeding except the prosecution of an alleged offense of perjury based upon false material contained in the financial statement. The financial statement shall be made available to the prosecution only for purposes of investigation of an alleged offense of perjury based upon false material contained in the financial statement at the conclusion of the proceedings for which the financial statement was required to be submitted. The financial statement and other financial information obtained from the defendant shall not be confidential and privileged in a proceeding under Section 987.8.

(d) In a capital case, the court may appoint an additional attorney as a cocounsel upon a written request of the first attorney appointed. The request shall be supported by an affidavit of the first attorney setting forth in detail the reasons why a second attorney should be appointed. Any affidavit filed with the court shall be confidential and privileged. The court shall appoint a second attorney when it is convinced by the reasons stated in the affidavit that the appointment is necessary to provide the defendant with effective representation.

If the request is denied, the court shall state on the record its reasons for denial of the request.

(e) This section shall become operative on January 1, 2000.

SEC. 5. Section 1202.4 of the Penal Code is amended to read:

1202.4. (a) (1) It is the intent of the Legislature that a victim of crime who incurs any economic loss as a result of the commission of a crime shall receive restitution directly from any defendant convicted of that crime.

(2) Upon a person being convicted of any crime in the State of California, the court shall order the defendant to pay a fine in the form of a penalty assessment in accordance with Section 1464.

(3) The court, in addition to any other penalty provided or imposed under the law, shall order the defendant to pay both of the following:

(A) A restitution fine in accordance with subdivision (b).

(B) Restitution to the victim or victims, if any, in accordance with subdivision (f), which shall be enforceable as if the order were a civil judgment pursuant to Section 1214.

(b) In every case where a person is convicted of a crime, the court shall impose a separate and additional restitution fine, unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record.

(1) The restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense, but shall not be less than two hundred dollars ($200), and not more than ten thousand dollars ($10,000), if the person is convicted of a felony, and shall not be less than one hundred dollars ($100), and not more than one thousand dollars ($1,000), if the person is convicted of a misdemeanor.

(2) In setting a felony restitution fine, the court may determine the amount of the fine as the product of two hundred dollars ($200) multiplied by the number of years of imprisonment the defendant is ordered to serve, multiplied by the number of felony counts of which the defendant is convicted.

(c) The court shall impose the restitution fine unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution fine. Inability to pay may be considered only in increasing the amount of the restitution fine in excess of the two-hundred-dollar ($200) or one-hundred-dollar ($100) minimum.

(d) In setting the amount of the fine pursuant to subdivision (b) in excess of the two-hundred-dollar ($200) or one-hundred-dollar ($100) minimum, the court shall consider any relevant factors including, but not limited to, the defendant's inability to pay, the seriousness and gravity of the offense and the circumstances of its commission, any economic gain derived by the defendant as a result of the crime, the extent to which any other person suffered any losses

as a result of the crime, and the number of victims involved in the crime. Those losses may include pecuniary losses to the victim or his or her dependents as well as intangible losses, such as psychological harm caused by the crime. Consideration of a defendant's inability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating his or her inability to pay. Express findings by the court as to the factors bearing on the amount of the fine shall not be required. A separate hearing for the fine shall not be required.

(e) The restitution fine shall not be subject to penalty assessments as provided in Section 1464, and shall be deposited in the Restitution Fund in the State Treasury.

(f) In every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court. The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record.

(1) The defendant has the right to a hearing before a judge to dispute the determination of the amount of restitution. The court may modify the amount, on its own motion or on the motion of the district attorney, the victim or victims, or the defendant. If a motion is made for modification of a restitution order, the victim shall be notified of that motion at least 10 days prior to the proceeding held to decide the motion.

(2) Determination of the amount of restitution ordered pursuant to this subdivision shall not be affected by the indemnification or subrogation rights of any third party. Restitution payments made pursuant to this subdivision shall be made to the Restitution Fund to the extent that the victim, as defined in subdivision (k), has received assistance pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code.

(3) To the extent possible, the restitution order shall be prepared by the sentencing court, shall identify each victim and each loss to which it pertains, and shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant's criminal conduct, including, but not limited to, all of the following:

(A) Full or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible.

(B) Medical expenses.

(C) Wages or profits lost due to injury incurred by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, while caring for the injured minor.

(D) Wages or profits lost by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, due to time spent as a witness or in assisting the police or prosecution.

(E) Noneconomic losses, including, but not limited to, psychological harm, for felony violations of Section 288.

(F) Interest, at the rate of 10 percent per annum, that accrues as of the date of sentencing or loss, as determined by the court.

(G) Actual and reasonable attorney's fees and other costs of collection accrued by a private entity on behalf of the victim.

(g) The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution order, nor shall inability to pay be a consideration in determining the amount of a restitution order.

(h) The district attorney may request an order of examination pursuant to the procedures specified in Article 2 (commencing with Section 708.110) of Chapter 6 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, in order to determine the defendant's financial assets for purposes of collecting on the restitution order.

(i) A restitution order imposed pursuant to subdivision (f) shall be enforceable as if the order were a civil judgment, pursuant to Section 1214.

(j) The making of a restitution order pursuant to subdivision (f) shall not affect the right of a victim to recovery from the Restitution Fund as otherwise provided by law, except to the extent that restitution is actually collected pursuant to the order. Restitution collected pursuant to this subdivision shall be credited to any other judgments for the same losses obtained against the defendant arising out of the crime for which the defendant was convicted.

(k) For purposes of this section, "victim" shall include the immediate surviving family of the actual victim. "Victim" shall also include any corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of a crime.

(*l*) At its discretion, the board of supervisors of any county may impose a fee to cover the actual administrative cost of collecting the restitution fine, not to exceed 10 percent of the amount ordered to be paid, to be added to the restitution fine and included in the order of the court, the proceeds of which shall be deposited in the general fund of the county.

(m) In every case in which the defendant is granted probation, the court shall make the payment of restitution fines and orders

imposed pursuant to this section a condition of probation. Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation shall continue to be enforceable by a victim pursuant to Section 1214 until the obligation is satisfied.

(n) If the court finds and states on the record compelling and extraordinary reasons why a restitution fine or full restitution order should not be required, the court shall order, as a condition of probation, that the defendant perform specified community service, unless it finds and states on the record compelling and extraordinary reasons not to require community service in addition to the finding that restitution should not be required. Upon revocation of probation, the court shall impose restitution pursuant to this section.

(o) The provisions of Section 13966.01 of the Government Code shall apply to restitution imposed pursuant to this section.

(p) 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. 5.5. Section 1202.4 of the Penal Code is amended to read:

1202.4. (a) (1) It is the intent of the Legislature that a victim of crime who incurs any economic loss as a result of the commission of a crime shall receive restitution directly from any defendant convicted of that crime.

(2) Upon a person being convicted of any crime in the State of California, the court shall order the defendant to pay a fine in the form of a penalty assessment in accordance with Section 1464.

(3) The court, in addition to any other penalty provided or imposed under the law, shall order the defendant to pay both of the following:

(A) A restitution fine in accordance with subdivision (b).

(B) Restitution to the victim or victims, if any, in accordance with subdivision (f), which shall be enforceable as if the order were a civil judgment.

(b) In every case where a person is convicted of a crime, the court shall impose a separate and additional restitution fine, unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record.

(1) The restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense, but shall not be less than two hundred dollars ($200), and not more than ten thousand dollars ($10,000), if the person is convicted of a felony, and shall not be less than one hundred dollars ($100), and not more than one thousand dollars ($1,000), if the person is convicted of a misdemeanor.

(2) In setting a felony restitution fine, the court may determine the amount of the fine as the product of two hundred dollars ($200) multiplied by the number of years of imprisonment the defendant is ordered to serve, multiplied by the number of felony counts of which the defendant is convicted.

(c) The court shall impose the restitution fine unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution fine. Inability to pay may be considered only in increasing the amount of the restitution fine in excess of the two-hundred-dollar ($200) or one-hundred-dollar ($100) minimum.

(d) In setting the amount of the fine pursuant to subdivision (b) in excess of the two-hundred-dollar ($200) or one-hundred-dollar ($100) minimum, the court shall consider any relevant factors including, but not limited to, the defendant's inability to pay, the seriousness and gravity of the offense and the circumstances of its commission, any economic gain derived by the defendant as a result of the crime, the extent to which any other person suffered any losses as a result of the crime, and the number of victims involved in the crime. Those losses may include pecuniary losses to the victim or his or her dependents as well as intangible losses, such as psychological harm caused by the crime. Consideration of a defendant's inability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating his or her inability to pay. Express findings by the court as to the factors bearing on the amount of the fine shall not be required. A separate hearing for the fine shall not be required.

(e) The restitution fine shall not be subject to penalty assessments as provided in Section 1464, and shall be deposited in the Restitution Fund in the State Treasury.

(f) In every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court. The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record.

(1) The defendant has the right to a hearing before a judge to dispute the determination of the amount of restitution. The court may modify the amount, on its own motion or on the motion of the district attorney, the victim or victims, or the defendant. If a motion is made for modification of a restitution order, the victim shall be notified of that motion at least 10 days prior to the proceeding held to decide the motion.

(2) Determination of the amount of restitution ordered pursuant to this subdivision shall not be affected by the indemnification or subrogation rights of any third party. Restitution payments made pursuant to this subdivision shall be made to the Restitution Fund to the extent that the victim, as defined in subdivision (k), has received

assistance pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code.

(3) To the extent possible, the restitution order shall be prepared by the sentencing court, shall identify each victim and each loss to which it pertains, and shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant's criminal conduct, including, but not limited to, all of the following:

(A) Full or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible.

(B) Medical expenses.

(C) Wages or profits lost due to injury incurred by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, while caring for the injured minor.

(D) Wages or profits lost by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, due to time spent as a witness or in assisting the police or prosecution.

(E) Noneconomic losses, including, but not limited to, psychological harm, for felony violations of Section 288.

(F) Interest, at the rate of 10 percent per annum, that accrues as of the date of sentencing or loss, as determined by the court.

(G) Actual and reasonable attorney's fees and other costs of collection accrued by a private entity on behalf of the victim.

(g) The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution order, nor shall inability to pay be a consideration in determining the amount of a restitution order.

(h) The district attorney may request an order of examination pursuant to the procedures specified in Article 2 (commencing with Section 708.110) of Chapter 6 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, in order to determine the defendant's financial assets for purposes of collecting on the restitution order.

(i) A restitution order imposed pursuant to subdivision (f) shall be enforceable as if the order were a civil judgment.

(j) The making of a restitution order pursuant to subdivision (f) shall not affect the right of a victim to recovery from the Restitution Fund as otherwise provided by law, except to the extent that restitution is actually collected pursuant to the order. Restitution collected pursuant to this subdivision shall be credited to any other judgments for the same losses obtained against the defendant arising out of the crime for which the defendant was convicted.

(k) For purposes of this section, "victim" shall include the immediate surviving family of the actual victim. "Victim" shall also

include any corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of a crime.

(*l*) At its discretion, the board of supervisors of any county may impose a fee to cover the actual administrative cost of collecting the restitution fine, not to exceed 10 percent of the amount ordered to be paid, to be added to the restitution fine and included in the order of the court, the proceeds of which shall be deposited in the general fund of the county.

(m) In every case in which the defendant is granted probation, the court shall make the payment of restitution fines and orders imposed pursuant to this section a condition of probation. Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation shall continue to be enforceable by a victim pursuant to Section 1214 until the obligation is satisfied.

(n) If the court finds and states on the record compelling and extraordinary reasons why a restitution fine or full restitution order should not be required, the court shall order, as a condition of probation, that the defendant perform specified community service, unless it finds and states on the record compelling and extraordinary reasons not to require community service in addition to the finding that restitution should not be required. Upon revocation of probation, the court shall impose restitution pursuant to this section.

(o) The provisions of Section 13966.01 of the Government Code shall apply to restitution imposed pursuant to this section.

(p) 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 1202.4 is added to the Penal Code, to read:

1202.4. (a) (1) It is the intent of the Legislature that a victim of crime who incurs any economic loss as a result of the commission of a crime shall receive restitution directly from any defendant convicted of that crime.

(2) Upon a person being convicted of any crime in the State of California, the court shall order the defendant to pay a fine in the form of a penalty assessment in accordance with Section 1464.

(3) The court, in addition to any other penalty provided or imposed under the law, shall order the defendant to pay both of the following:

(A) A restitution fine in accordance with subdivision (b).

(B) Restitution to the victim or victims, if any, in accordance with subdivision (f), which shall be enforceable as if the order were a civil judgment pursuant to Section 1214.

(b) In every case where a person is convicted of a crime, the court shall impose a separate and additional restitution fine, unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record.

(1) The restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense, but shall not be less than two hundred dollars ($200), and not more than ten thousand dollars ($10,000), if the person is convicted of a felony, and shall not be less than one hundred dollars ($100), and not more than one thousand dollars ($1,000), if the person is convicted of a misdemeanor.

(2) In setting a felony restitution fine, the court may determine the amount of the fine as the product of two hundred dollars ($200) multiplied by the number of years of imprisonment the defendant is ordered to serve, multiplied by the number of felony counts of which the defendant is convicted.

(c) The court shall impose the restitution fine unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution fine. Inability to pay may be considered only in increasing the amount of the restitution fine in excess of the two-hundred-dollar ($200) or one-hundred-dollar ($100) minimum.

(d) In setting the amount of the fine pursuant to subdivision (b) in excess of the two-hundred-dollar ($200) or one-hundred-dollar ($100) minimum, the court shall consider any relevant factors including, but not limited to, the defendant's inability to pay, the seriousness and gravity of the offense and the circumstances of its commission, any economic gain derived by the defendant as a result of the crime, the extent to which any other person suffered any losses as a result of the crime, and the number of victims involved in the crime. Those losses may include pecuniary losses to the victim or his or her dependents as well as intangible losses, such as psychological harm caused by the crime. Consideration of a defendant's inability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating his or her inability to pay. Express findings by the court as to the factors bearing on the amount of the fine shall not be required. A separate hearing for the fine shall not be required.

(e) The restitution fine shall not be subject to penalty assessments as provided in Section 1464, and shall be deposited in the Restitution Fund in the State Treasury.

(f) In every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court. The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record.

(1) The defendant has the right to a hearing before a judge to dispute the determination of the amount of restitution. The court may modify the amount, on its own motion or on the motion of the district attorney, the victim or victims, or the defendant. If a motion is made for modification of a restitution order, the victim shall be notified of that motion at least 10 days prior to the proceeding held to decide the motion.

(2) Determination of the amount of restitution ordered pursuant to this subdivision shall not be affected by the indemnification or subrogation rights of any third party. Restitution payments made pursuant to this subdivision shall be made to the Restitution Fund to the extent that the victim, as defined in subdivision (k), has received assistance pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code.

(3) To the extent possible, the restitution order shall be prepared by the sentencing court, shall identify each victim and each loss to which it pertains, and shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant's criminal conduct, including, but not limited to, all of the following:

(A) Full or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible.

(B) Medical expenses.

(C) Wages or profits lost due to injury incurred by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, while caring for the injured minor.

(D) Wages or profits lost by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, due to time spent as a witness or in assisting the police or prosecution.

(E) Noneconomic losses, including, but not limited to, psychological harm, for felony violations of Section 288.

(F) Interest, at the rate of 10 percent per annum, that accrues as of the date of sentencing or loss, as determined by the court.

(G) Actual and reasonable attorney's fees and other costs of collection accrued by a private entity on behalf of the victim.

(4) Except as provided in paragraph (5), in any case in which an order may be entered pursuant to this subdivision, the defendant shall prepare and file a disclosure identifying all assets, income, and liabilities in which the defendant held or controlled a present or future interest as of the date of the defendant's arrest for the crime for which restitution may be ordered. This disclosure shall be available to the victim pursuant to Section 1214, and any use the court may make of the disclosure shall be subject to the restrictions of subdivision (g). The disclosure shall be signed by the defendant upon a form approved or adopted by the Judicial Council for the purpose

of facilitating the disclosure. Any defendant who willfully states as true any material matter that he or she knows to be false on the disclosure required by this subdivision is guilty of a misdemeanor, unless this conduct is punishable as perjury or another provision of law provides for a greater penalty.

(5) A defendant who fails to file the financial disclosure required in paragraph (4), but who has filed a financial affidavit or financial information pursuant to subdivision (c) of Section 987, shall be deemed to have waived the confidentiality of that affidavit or financial information as to a victim in whose favor the order of restitution is entered pursuant to subdivision (f). The affidavit or information shall serve in lieu of the financial disclosure required in paragraph (4), and paragraphs (6), (7), (8), and (9) shall not apply.

(6) Except as provided in paragraph (5), the defendant shall file the disclosure with the clerk of the court no later than the date set for the defendant's sentencing, unless otherwise directed by the court. The disclosure may be inspected or copied as provided by subdivision (b), (c), or (d) of Section 1203.05.

(7) In its discretion, the court may relieve the defendant of the duty under paragraph (6) of filing with the clerk by requiring that the defendant's disclosure be submitted as an attachment to, and be available to, those authorized to receive the following:

(A) Any report submitted pursuant to subparagraph (C) of paragraph (2) of subdivision (b) of Section 1203 or subdivision (g) of Section 1203.

(B) Any stipulation submitted pursuant to paragraph (4) of subdivision (b) of Section 1203.

(C) Any report by the probation officer, or any information submitted by the defendant applying for a conditional sentence pursuant to subdivision (d) of Section 1203.

(8) The court may consider a defendant's unreasonable failure to make a complete disclosure pursuant to paragraph (4) as any of the following:

(A) A circumstance in aggravation of the crime in imposing a term under subdivision (b) of Section 1170.

(B) A factor indicating that the interests of justice would not be served by admitting the defendant to probation under Section 1203.

(C) A factor indicating that the interests of justice would not be served by conditionally sentencing the defendant under Section 1203.

(D) A factor indicating that the interests of justice would not be served by imposing less than the maximum fine and sentence fixed by law for the case.

(9) A defendant's failure or refusal to make the required disclosure pursuant to paragraph (4) shall not delay entry of an order of restitution or pronouncement of sentence. In appropriate cases, the court may do any of the following:

(A) Require the defendant to be examined by the district attorney pursuant to subdivision (h).

(B) If sentencing the defendant under Section 1170, provide that the victim shall receive a copy of the portion of the probation report filed pursuant to Section 1203.10 concerning the defendant's employment, occupation, finances, and liabilities.

(C) If sentencing the defendant under Section 1203, set a date and place for submission of the disclosure required by paragraph (4) as a condition of probation or suspended sentence.

(g) The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution order, nor shall inability to pay be a consideration in determining the amount of a restitution order.

(h) The district attorney may request an order of examination pursuant to the procedures specified in Article 2 (commencing with Section 708.110) of Chapter 6 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, in order to determine the defendant's financial assets for purposes of collecting on the restitution order.

(i) A restitution order imposed pursuant to subdivision (f) shall be enforceable as if the order were a civil judgment, pursuant to Section 1214.

(j) The making of a restitution order pursuant to subdivision (f) shall not affect the right of a victim to recovery from the Restitution Fund as otherwise provided by law, except to the extent that restitution is actually collected pursuant to the order. Restitution collected pursuant to this subdivision shall be credited to any other judgments for the same losses obtained against the defendant arising out of the crime for which the defendant was convicted.

(k) For purposes of this section, "victim" shall include the immediate surviving family of the actual victim. "Victim" shall also include any corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of a crime.

(*l*) At its discretion, the board of supervisors of any county may impose a fee to cover the actual administrative cost of collecting the restitution fine, not to exceed 10 percent of the amount ordered to be paid, to be added to the restitution fine and included in the order of the court, the proceeds of which shall be deposited in the general fund of the county.

(m) In every case in which the defendant is granted probation, the court shall make the payment of restitution fines and orders imposed pursuant to this section a condition of probation. Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation shall continue to be enforceable by a victim pursuant to Section 1214 until the obligation is satisfied.

(n) If the court finds and states on the record compelling and extraordinary reasons why a restitution fine or full restitution order should not be required, the court shall order, as a condition of probation, that the defendant perform specified community service, unless it finds and states on the record compelling and extraordinary reasons not to require community service in addition to the finding that restitution should not be required. Upon revocation of probation, the court shall impose restitution pursuant to this section.

(o) The provisions of Section 13966.01 of the Government Code shall apply to restitution imposed pursuant to this section.

(p) (1) This section shall become operative on January 1, 2000, except when all of the following apply:

(A) A majority of judges of a court apply to the Judicial Council for an extension.

(B) The judicial application described in paragraph (1) documents the need for time to adjust restitution procedures and practices, as well as to facilitate judicial education and training in direct restitution to victims under subdivision (f).

(C) The Judicial Council grants the extension upon finding good cause.

(2) Upon the grant of an extension pursuant to the application of a court under this subdivision, the provisions of former Section 1214 shall continue to apply with respect to that court. The extension may be for any period of time set by the Judicial Council, but shall not exceed January 1, 2002, in any case.

SEC. 6.5. Section 1202.4 of the Penal Code is amended to read:

1202.4. (a) (1) It is the intent of the Legislature that a victim of crime who incurs any economic loss as a result of the commission of a crime shall receive restitution directly from any defendant convicted of that crime.

(2) Upon a person being convicted of any crime in the State of California, the court shall order the defendant to pay a fine in the form of a penalty assessment in accordance with Section 1464.

(3) The court, in addition to any other penalty provided or imposed under the law, shall order the defendant to pay both of the following:

(A) A restitution fine in accordance with subdivision (b).

(B) Restitution to the victim or victims, if any, in accordance with subdivision (f), which shall be enforceable as if the order were a civil judgment.

(b) In every case where a person is convicted of a crime, the court shall impose a separate and additional restitution fine, unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record.

(1) The restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense, but shall not be less than two hundred dollars ($200), and not more than ten thousand dollars ($10,000), if the person is convicted of a felony, and

shall not be less than one hundred dollars ($100), and not more than one thousand dollars ($1,000), if the person is convicted of a misdemeanor.

(2) In setting a felony restitution fine, the court may determine the amount of the fine as the product of two hundred dollars ($200) multiplied by the number of years of imprisonment the defendant is ordered to serve, multiplied by the number of felony counts of which the defendant is convicted.

(c) The court shall impose the restitution fine unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution fine. Inability to pay may be considered only in increasing the amount of the restitution fine in excess of the two-hundred-dollar ($200) or one-hundred-dollar ($100) minimum.

(d) In setting the amount of the fine pursuant to subdivision (b) in excess of the two-hundred-dollar ($200) or one-hundred-dollar ($100) minimum, the court shall consider any relevant factors including, but not limited to, the defendant's inability to pay, the seriousness and gravity of the offense and the circumstances of its commission, any economic gain derived by the defendant as a result of the crime, the extent to which any other person suffered any losses as a result of the crime, and the number of victims involved in the crime. Those losses may include pecuniary losses to the victim or his or her dependents as well as intangible losses, such as psychological harm caused by the crime. Consideration of a defendant's inability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating his or her inability to pay. Express findings by the court as to the factors bearing on the amount of the fine shall not be required. A separate hearing for the fine shall not be required.

(e) The restitution fine shall not be subject to penalty assessments as provided in Section 1464, and shall be deposited in the Restitution Fund in the State Treasury.

(f) In every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court. The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record.

(1) The defendant has the right to a hearing before a judge to dispute the determination of the amount of restitution. The court may modify the amount, on its own motion or on the motion of the district attorney, the victim or victims, or the defendant. If a motion

is made for modification of a restitution order, the victim shall be notified of that motion at least 10 days prior to the proceeding held to decide the motion.

(2) Determination of the amount of restitution ordered pursuant to this subdivision shall not be affected by the indemnification or subrogation rights of any third party. Restitution payments made pursuant to this subdivision shall be made to the Restitution Fund to the extent that the victim, as defined in subdivision (k), has received assistance pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code.

(3) To the extent possible, the restitution order shall be prepared by the sentencing court, shall identify each victim and each loss to which it pertains, and shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant's criminal conduct, including, but not limited to, all of the following:

(A) Full or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible.

(B) Medical expenses.

(C) Wages or profits lost due to injury incurred by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, while caring for the injured minor.

(D) Wages or profits lost by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, due to time spent as a witness or in assisting the police or prosecution.

(E) Noneconomic losses, including, but not limited to, psychological harm, for felony violations of Section 288.

(F) Interest, at the rate of 10 percent per annum, that accrues as of the date of sentencing or loss, as determined by the court.

(G) Actual and reasonable attorney's fees and other costs of collection accrued by a private entity on behalf of the victim.

(4) Except as provided in paragraph (5), in any case in which an order may be entered pursuant to this subdivision, the defendant shall prepare and file a disclosure identifying all assets, income, and liabilities in which the defendant held or controlled a present or future interest as of the date of the defendant's arrest for the crime for which restitution may be ordered. This disclosure shall be available to the victim pursuant to Section 1214, and any use the court may make of the disclosure shall be subject to the restrictions of subdivision (g). The disclosure shall be signed by the defendant upon a form approved or adopted by the Judicial Council for the purpose of facilitating the disclosure. Any defendant who willfully states as true any material matter that he or she knows to be false on the disclosure required by this subdivision is guilty of a misdemeanor,

unless this conduct is punishable as perjury or another provision of law provides for a greater penalty.

(5) A defendant who fails to file the financial disclosure required in paragraph (4), but who has filed a financial affidavit or financial information pursuant to subdivision (c) of Section 987, shall be deemed to have waived the confidentiality of that affidavit or financial information as to a victim in whose favor the order of restitution is entered pursuant to subdivision (f). The affidavit or information shall serve in lieu of the financial disclosure required in paragraph (4), and paragraphs (6), (7), (8), and (9) shall not apply.

(6) Except as provided in paragraph (5), the defendant shall file the disclosure with the clerk of the court no later than the date set for the defendant's sentencing, unless otherwise directed by the court. The disclosure may be inspected or copied as provided by subdivision (b), (c), or (d) of Section 1203.05.

(7) In its discretion, the court may relieve the defendant of the duty under paragraph (6) of filing with the clerk by requiring that the defendant's disclosure be submitted as an attachment to, and be available to, those authorized to receive the following:

(A) Any report submitted pursuant to subparagraph (C) of paragraph (2) of subdivision (b) of Section 1203 or subdivision (g) of Section 1203.

(B) Any stipulation submitted pursuant to paragraph (4) of subdivision (b) of Section 1203.

(C) Any report by the probation officer, or any information submitted by the defendant applying for a conditional sentence pursuant to subdivision (d) of Section 1203.

(8) The court may consider a defendant's unreasonable failure to make a complete disclosure pursuant to paragraph (4) as any of the following:

(A) A circumstance in aggravation of the crime in imposing a term under subdivision (b) of Section 1170.

(B) A factor indicating that the interests of justice would not be served by admitting the defendant to probation under Section 1203.

(C) A factor indicating that the interests of justice would not be served by conditionally sentencing the defendant under Section 1203.

(D) A factor indicating that the interests of justice would not be served by imposing less than the maximum fine and sentence fixed by law for the case.

(9) A defendant's failure or refusal to make the required disclosure pursuant to paragraph (4) shall not delay entry of an order of restitution or pronouncement of sentence. In appropriate cases, the court may do any of the following:

(A) Require the defendant to be examined by the district attorney pursuant to subdivision (h).

(B) If sentencing the defendant under Section 1170, provide that the victim shall receive a copy of the portion of the probation report

filed pursuant to Section 1203.10 concerning the defendant's employment, occupation, finances, and liabilities.

(C) If sentencing the defendant under Section 1203, set a date and place for submission of the disclosure required by paragraph (4) as a condition of probation or suspended sentence.

(g) The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution order, nor shall inability to pay be a consideration in determining the amount of a restitution order.

(h) The district attorney may request an order of examination pursuant to the procedures specified in Article 2 (commencing with Section 708.110) of Chapter 6 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, in order to determine the defendant's financial assets for purposes of collecting on the restitution order.

(i) A restitution order imposed pursuant to subdivision (f) shall be enforceable as if the order were a civil judgment.

(j) The making of a restitution order pursuant to subdivision (f) shall not affect the right of a victim to recovery from the Restitution Fund as otherwise provided by law, except to the extent that restitution is actually collected pursuant to the order. Restitution collected pursuant to this subdivision shall be credited to any other judgments for the same losses obtained against the defendant arising out of the crime for which the defendant was convicted.

(k) For purposes of this section, "victim" shall include the immediate surviving family of the actual victim. "Victim" shall also include any corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of a crime.

(*l*) At its discretion, the board of supervisors of any county may impose a fee to cover the actual administrative cost of collecting the restitution fine, not to exceed 10 percent of the amount ordered to be paid, to be added to the restitution fine and included in the order of the court, the proceeds of which shall be deposited in the general fund of the county.

(m) In every case in which the defendant is granted probation, the court shall make the payment of restitution fines and orders imposed pursuant to this section a condition of probation. Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation shall continue to be enforceable by a victim pursuant to Section 1214 until the obligation is satisfied.

(n) If the court finds and states on the record compelling and extraordinary reasons why a restitution fine or full restitution order should not be required, the court shall order, as a condition of probation, that the defendant perform specified community service, unless it finds and states on the record compelling and extraordinary

reasons not to require community service in addition to the finding that restitution should not be required. Upon revocation of probation, the court shall impose restitution pursuant to this section.

(o) The provisions of Section 13966.01 of the Government Code shall apply to restitution imposed pursuant to this section.

(p) (1) This section shall become operative on January 1, 2000, except when all of the following apply:

(A) A majority of judges of a court apply to the Judicial Council for an extension.

(B) The judicial application described in paragraph (1) documents the need for time to adjust restitution procedures and practices, as well as to facilitate judicial education and training in direct restitution to victims under subdivision (f).

(C) The Judicial Council grants the extension upon finding good cause.

(2) Upon the grant of an extension pursuant to the application of a court under this subdivision, the provisions of former Section 1214 shall continue to apply with respect to that court. The extension may be for any period of time set by the Judicial Council, but shall not exceed January 1, 2002, in any case.

SEC. 7. Section 1214 of the Penal Code is amended to read:

1214. (a) If the judgment is for a fine, including a restitution fine ordered pursuant to Section 1202.4 or Section 1203.04, as operative on or before August 2, 1995, or Section 13967 of the Government Code, as operative on or before September 28, 1994, with or without imprisonment, the judgment may be enforced in the manner provided for the enforcement of money judgments generally.

(b) In any case in which a defendant is ordered to pay restitution, the order to pay restitution (1) is deemed a money judgment if the defendant was informed of his or her right to have a judicial determination of the amount and was provided with a hearing, waived a hearing, or stipulated to the amount of the restitution ordered, and (2) shall be fully enforceable by a victim as if the restitution order were a civil judgment, and enforceable in the same manner as is provided for the enforcement of any other money judgment. Upon the victim's request, the court shall provide the victim in whose favor the order of restitution is entered with a certified copy of that order. In addition, upon request, the court shall provide the State Board of Control with a certified copy of any order imposing a restitution fine or order. A victim shall have access to all resources available under the law to enforce the restitution order, including, but not limited to, access to the defendant's financial records, use of wage garnishment and lien procedures, information regarding the defendant's assets, and the ability to apply for restitution from any fund established for the purpose of compensating victims in civil cases. Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation or parole is enforceable by the victim pursuant to this section. Victims

and the State Board of Control shall inform the court whenever an order to pay restitution is satisfied.

(c) Chapter 3 (commencing with Section 683.010) of Division 1 of Title 9 of Part 2 of the Code of Civil Procedure shall not apply to a judgment for any fine or restitution ordered pursuant to Section 1202.4 or Section 1203.04, as operative on or before August 2, 1995, or Section 13967 of the Government Code, as operative on or before September 28, 1994.

(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. 7.5. Section 1214 of the Penal Code is amended to read:

1214. (a) If the judgment is for a fine, including a restitution fine ordered pursuant to Section 1202.4 or Section 1203.04, as operative on or before August 2, 1995, or Section 13967 of the Government Code, as operative on or before September 28, 1994, with or without imprisonment, the judgment may be enforced in the manner provided for the enforcement of money judgments generally.

(b) In any case in which a defendant is ordered to pay restitution, the order to pay restitution (1) is deemed a money judgment if the defendant was informed of his or her right to have a judicial determination of the amount and was provided with a hearing, waived a hearing, or stipulated to the amount of the restitution ordered, and (2) shall be fully enforceable by a victim as if the restitution order were a civil judgment, and enforceable in the same manner as is provided for the enforcement of any other money judgment. Upon the victim's request, the court shall provide the victim in whose favor the order of restitution is entered with a certified copy of that order. In addition, upon request, the court shall provide the State Board of Control with a certified copy of any order imposing a restitution fine or order. A victim shall have access to all resources available under the law to enforce the restitution order, including, but not limited to, access to the defendant's financial records, use of wage garnishment and lien procedures, information regarding the defendant's assets, and the ability to apply for restitution from any fund established for the purpose of compensating victims in civil cases. Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation or parole is enforceable by the victim pursuant to this section. Victims and the State Board of Control shall inform the court whenever an order to pay restitution is satisfied.

(c) Except as provided in subdivision (d), and notwithstanding the amount in controversy limitation of Section 85 of the Code of Civil Procedure, a restitution order or restitution fine that was imposed pursuant to Section 1202.4 by the municipal court, or by the superior court acting pursuant to subdivision (d) of Section 1462, may be enforced in the same manner as a money judgment in a limited civil case.

(d) Chapter 3 (commencing with Section 683.010) of Division 1 of Title 9 of Part 2 of the Code of Civil Procedure shall not apply to a judgment for any fine or restitution ordered pursuant to Section 1202.4 or Section 1203.04, as operative on or before August 2, 1995, or Section 13967 of the Government Code, as operative on or before September 28, 1994.

(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. 8. Section 1214 is added to the Penal Code, to read:

1214. (a) If the judgment is for a fine, including a restitution fine ordered pursuant to Section 1202.4 or Section 1203.04 as operative on or before August 2, 1995, or Section 13967 of the Government Code, as operative on or before September 28, 1994, with or without imprisonment, the judgment may be enforced in the manner provided for the enforcement of money judgments generally.

(b) In any case in which a defendant is ordered to pay restitution, the order to pay restitution (1) is deemed a money judgment if the defendant was informed of his or her right to have a judicial determination of the amount and was provided with a hearing, waived a hearing, or stipulated to the amount of the restitution ordered, and (2) shall be fully enforceable by a victim as if the restitution order were a civil judgment, and enforceable in the same manner as is provided for the enforcement of any other money judgment. Upon the victim's request, the court shall provide the victim in whose favor the order of restitution is entered with a certified copy of that order and a copy of the defendant's disclosure pursuant to paragraph (4) of subdivision (f) of Section 1202.4, or affidavit or information pursuant to paragraph (5) of subdivision (f) of Section 1202.4, or report pursuant to paragraph (7) of subdivision (f) of Section 1202.4. The court also shall provide this information to the district attorney upon request in connection with an investigation or prosecution involving perjury or the veracity of the information contained within the defendant's financial disclosure. In addition, upon request, the court shall provide the State Board of Control with a certified copy of any order imposing a restitution fine or order and a copy of the defendant's disclosure pursuant to paragraph (4) of subdivision (f) of Section 1202.4, or affidavit or information pursuant to paragraph (5) of subdivision (f) of Section 1202.4, or report pursuant to paragraph (7) of subdivision (f) of Section 1202.4. A victim shall have access to all resources available under the law to enforce the restitution order, including, but not limited to, access to the defendant's financial records, use of wage garnishment and lien procedures, information regarding the defendant's assets, and the ability to apply for restitution from any fund established for the purpose of compensating victims in civil cases. Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation or parole is enforceable by the victim pursuant

to this section. Victims and the State Board of Control shall inform the court whenever an order to pay restitution is satisfied.

(c) Chapter 3 (commencing with Section 683.010) of Division 1 of Title 9 of Part 2 of the Code of Civil Procedure shall not apply to a judgment for any fine or restitution ordered pursuant to Section 1202.4 or Section 1203.04 as operative on or before August 2, 1995, or Section 13967 of the Government Code, as operative on or before September 28, 1994.

(d) (1) This section shall become operative on January 1, 2000, except when all of the following apply:

(A) A majority of judges of a court apply to the Judicial Council for an extension.

(B) The judicial application described in paragraph (1) documents the need for time to adjust restitution procedures and practices, as well as to facilitate judicial education and training in direct restitution to victims under subdivision (f).

(C) The Judicial Council grants the extension upon finding good cause.

(2) Upon the grant of an extension pursuant to the application of a court under this subdivision, the provisions of former Section 1202.4 shall continue to apply with respect to that court. The extension may be for any period of time set by the Judicial Council, but shall not exceed January 1, 2002, in any case.

SEC. 8.5. Section 1214 of the Penal Code is amended to read:

1214. (a) If the judgment is for a fine, including a restitution fine ordered pursuant to Section 1202.4 or Section 1203.04, as operative on or before August 2, 1995, or Section 13967 of the Government Code, as operative on or before September 28, 1994, with or without imprisonment, the judgment may be enforced in the manner provided for the enforcement of money judgments generally.

(b) In any case in which a defendant is ordered to pay restitution, the order to pay restitution (1) is deemed a money judgment if the defendant was informed of his or her right to have a judicial determination of the amount and was provided with a hearing, waived a hearing, or stipulated to the amount of the restitution ordered, and (2) shall be fully enforceable by a victim as if the restitution order were a civil judgment, and enforceable in the same manner as is provided for the enforcement of any other money judgment. Upon the victim's request, the court shall provide the victim in whose favor the order of restitution is entered with a certified copy of that order and a copy of the defendant's disclosure pursuant to paragraph (4) of subdivision (f) of Section 1202.4, or affidavit or information pursuant to paragraph (5) of subdivision (f) of Section 1202.4, or report pursuant to paragraph (7) of subdivision (f) of Section 1202.4. The court also shall provide this information to the district attorney upon request in connection with an investigation or prosecution involving perjury or the veracity of the information contained within the defendant's financial disclosure. In addition,

upon request, the court shall provide the State Board of Control with a certified copy of any order imposing a restitution fine or order and a copy of the defendant's disclosure pursuant to paragraph (4) of subdivision (f) of Section 1202.4, or affidavit or information pursuant to paragraph (5) of subdivision (f) of Section 1202.4, or report pursuant to paragraph (7) of subdivision (f) of Section 1202.4. A victim shall have access to all resources available under the law to enforce the restitution order, including, but not limited to, access to the defendant's financial records, use of wage garnishment and lien procedures, information regarding the defendant's assets, and the ability to apply for restitution from any fund established for the purpose of compensating victims in civil cases. Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation or parole is enforceable by the victim pursuant to this section. Victims and the State Board of Control shall inform the court whenever an order to pay restitution is satisfied.

(c) Except as provided in subdivision (d), and notwithstanding the amount in controversy limitation of Section 85 of the Code of Civil Procedure, a restitution order or restitution fine that was imposed pursuant to Section 1202.4 by the municipal court, or by the superior court acting pursuant to subdivision (d) of Section 1462, may be enforced in the same manner as a money judgment in a limited civil case.

(d) Chapter 3 (commencing with Section 683.010) of Division 1 of Title 9 of Part 2 of the Code of Civil Procedure shall not apply to a judgment for any fine or restitution ordered pursuant to Section 1202.4 or Section 1203.04, as operative on or before August 2, 1995, or Section 13967 of the Government Code, as operative on or before September 28, 1994.

(e) (1) This section shall become operative on January 1, 2000, except when all of the following apply:

(A) A majority of judges of a court apply to the Judicial Council for an extension.

(B) The judicial application described in paragraph (1) documents the need for time to adjust restitution procedures and practices, as well as to facilitate judicial education and training in direct restitution to victims under subdivision (f).

(C) The Judicial Council grants the extension upon finding good cause.

(2) Upon the grant of an extension pursuant to the application of a court under this subdivision, the provisions of former Section 1202.4 shall continue to apply with respect to that court. The extension may be for any period of time set by the Judicial Council, but shall not exceed January 1, 2002, in any case.

SEC. 9. Section 2085.5 of the Penal Code is amended to read:

2085.5. (a) In any case in which a prisoner owes a restitution fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 28, 1994, or

subdivision (b) of Section 1202.4, the Director of Corrections shall deduct a minimum of 20 percent or the balance owing on the fine amount, whichever is less, up to a maximum of 50 percent from the wages and trust account deposits of a prisoner, unless prohibited by federal law, and shall transfer that amount to the State Board of Control for deposit in the Restitution Fund in the State Treasury. Any amount so deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.

(b) In any case in which a prisoner owes a restitution order imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 28, 1994, or subdivision (f) of Section 1202.4, the Director of Corrections shall deduct a minimum of 20 percent or the balance owing on the order amount, whichever is less, up to a maximum of 50 percent from the wages and trust account deposits of a prisoner, unless prohibited by federal law. If the restitution is owed to a person who has filed an application with the Victims of Crime Program, the director shall transfer that amount to the State Board of Control for direct payment to the victim, or payment shall be made to the Restitution Fund to the extent that the victim has received assistance pursuant to that program. No deductions shall be made on behalf of victims who have not filed an application with the Victims of Crime Program. The sentencing court shall be provided a record of the payments made to victims and of the payments deposited to the Restitution Fund pursuant to this subdivision.

(c) The director shall deduct and retain from the wages and trust account deposits of a prisoner, unless prohibited by federal law, an administrative fee that totals 10 percent of any amount transferred to the State Board of Control pursuant to subdivision (a) or (b). The director shall deduct and retain from any prisoner settlement or trial award, an administrative fee that totals 5 percent of any amount paid from the settlement or award to satisfy an outstanding restitution order or fine pursuant to subdivision (j), unless prohibited by federal law. The director shall deposit the administrative fee moneys in a special deposit account for reimbursing administrative and support costs of the restitution program of the Department of Corrections. The director, at his or her discretion, may retain any excess funds in the special deposit account for future reimbursement of the department's administrative and support costs for the restitution program or may transfer all or part of the excess funds for deposit in the Restitution Fund.

(d) In any case in which a parolee owes a restitution fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 28, 1994, or subdivision (b) of Section 1202.4, the Director of Corrections may collect from the parolee any moneys owing on the restitution fine amount, unless prohibited by federal law, and shall transfer that amount to the State

Board of Control for deposit in the Restitution Fund in the State Treasury. Any amount so deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.

(e) In any case in which a parolee owes a restitution fine, subject to an order, imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 28, 1994, or paragraph (3) of subdivision (a) of Section 1202.4, the Director of Corrections may collect from the parolee any moneys owing, unless prohibited by federal law. If the restitution is owed to a person who has filed an application with the Victims of Crime Program, the director shall transfer that amount to the State Board of Control for direct payment to the victim, or payment shall be made to the Restitution Fund to the extent that the victim has received assistance pursuant to that program. No deductions shall be made on behalf of victims who have not filed an application with the Victims of Crime Program. The sentencing court shall be provided a record of the payments made by the offender pursuant to this subdivision.

(f) The director may deduct and retain from any moneys collected from parolees an administrative fee that totals 10 percent of any amount transferred to the State Board of Control pursuant to subdivision (d) or (e), unless prohibited by federal law. The director shall deposit the administrative fee moneys in a special deposit account for reimbursing administrative and support costs of the restitution program of the Department of Corrections. The director, at his or her discretion, may retain any excess funds in the special deposit account for future reimbursement of the department's administrative and support costs for the restitution program or may transfer all or part of the excess funds for deposit in the Restitution Fund.

(g) When a prisoner has both a restitution fine and a restitution order from the sentencing court, the Department of Corrections shall collect the restitution order first pursuant to subdivision (b).

(h) When a parolee has both a restitution fine and order from the sentencing court, the Department of Corrections may collect the restitution order first, pursuant to subdivision (e).

(i) If an inmate is housed at an institution that requires food to be purchased from the institution canteen for unsupervised overnight visits, and if the money for the purchase of this food is received from funds other than the inmate's wages, that money shall be exempt from restitution deductions. This exemption shall apply to the actual amount spent on food for the visit up to a maximum of fifty dollars ($50) for visits that include the inmate and one visitor, seventy dollars ($70) for visits that include the inmate and two or three visitors, and eighty dollars ($80) for visits that include the inmate and four or more visitors.

(j) Any compensatory or punitive damages awarded by trial or settlement to a prisoner in connection with a civil action brought

against any federal, state, or local jail, prison, or correctional facility, or any official or agent thereof, shall be paid directly, after payment of reasonable attorney's fees and litigation costs approved by the court, to satisfy any outstanding restitution orders or restitution fines against the prisoner. The balance of any award shall be forwarded to the prisoner after full payment of all outstanding restitution orders and restitution fines, subject to subdivision (c). The Department of Corrections shall make all reasonable efforts to notify the victims of the crime for which the prisoner was convicted concerning the pending payment of any compensatory or punitive damages. This subdivision shall apply to cases settled or awarded on or after April 26, 1996, pursuant to Sections 807 and 808 of the federal Prison Litigation Reform Act of 1995 (Title 8, P.L. 104-134).

(k) (1) Amounts transferred to the State Board of Control for payment of direct orders of restitution shall be paid to the victim within 60 days from the date the restitution revenues are received by the State Board of Control. If the restitution payment to a victim is less than fifty dollars ($50), then payment need not be forwarded to that victim until the payment reaches fifty dollars ($50) or until 180 days from the date the first payment is received, whichever occurs sooner.

(2) In any case in which a victim cannot be located, the restitution revenues received by the State Board of Control on behalf of the victim shall be held in trust in the Restitution Fund until the end of the state fiscal year subsequent to the state fiscal year in which the funds were deposited or until such time as the victim has provided current address information, whichever occurs sooner. Amounts remaining in trust at the end of the specified period of time shall revert to the Restitution Fund.

(3) Any victim failing to provide a current address within the period of time specified in paragraph (2) may provide documentation to the Department of Corrections, which in turn shall verify that moneys were in fact collected on behalf of the victim. Upon receipt of that verified information from the Department of Corrections, the State Board of Control shall transmit the restitution revenues to the victim in accordance with the provisions of subdivision (b).

SEC. 10. Section 11177.2 of the Penal Code is amended to read:

11177.2. (a) No parolee or inmate may be released on parole to reside in any other receiving state if the parolee or inmate is subject to an unsatisfied order of restitution to a victim or a restitution fine within the sending state.

(b) A parolee or inmate may be granted an exception to the prohibition in subdivision (a) if the parolee or inmate posts a bond for the amount of the restitution order.

(c) A parolee or inmate may petition the court for a hearing to determine whether, in the interests of justice, the prohibition against

leaving the state should be waived. This section shall not be construed to allow the reduction or waiver of a restitution order or fine.

SEC. 11. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 12. Sections 5.5 and 6.5 of this bill incorporate amendments to Section 1202.4 of the Penal Code proposed by both this bill and SB 1608. These sections shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 1202.4 of the Penal Code, and (3) this bill is enacted after SB 1608, in which case Sections 5 and 6 of this bill shall not become operative.

SEC. 13. Sections 7.5 and 8.5 of this bill incorporate amendments to Section 1214 of the Penal Code proposed by both this bill and SB 2139. These sections shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 1214 of the Penal Code, and (3) this bill is enacted after SB 2139, in which case Section 1214 of the Penal Code as amended by SB 2139, shall remain operative only until the operative date of this bill, at which time Sections 7.5 and 8.5 of this bill shall become operative, and Sections 7 and 8 of this bill shall not become operative.

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 588

An act to amend Sections 53601 and 53635 of the Government Code, relating to local agency investments.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. Section 53601 of the Government Code is amended to read:

53601. The legislative body of a local agency having money in a sinking fund of, or surplus money in, its treasury not required for the immediate needs of the local agency may invest any portion of the money that it deems wise or expedient in those investments set forth below. A local agency purchasing or obtaining any securities prescribed in this section, in a negotiable, bearer, registered, or nonregistered format, shall require delivery of the securities to the local agency, including those purchased for the agency by financial advisors, consultants, or managers using the agency's funds, by book entry, physical delivery, or by third party custodial agreement. The transfer of securities to the counterparty bank's customer book entry account may be used for book entry delivery. For purposes of this section "counterparty" means the other party to the transaction. A counterparty bank's trust department or separate safekeeping department may be used for the physical delivery of the security if the security is held in the name of the local agency. Where this section specifies a percentage limitation for a particular category of investment, that percentage is applicable only at the date of purchase. Where this section does not specify a limitation on the term or remaining maturity at the time of the investment, no investment shall be made in any security, other than a security underlying a repurchase or reverse repurchase agreement authorized by this section, that at the time of the investment has a term remaining to maturity in excess of five years, unless the legislative body has granted express authority to make that investment either specifically or as a part of an investment program approved by the legislative body no less than three months prior to the investment:

(a) Bonds issued by the local agency, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency or by a department, board, agency, or authority of the local agency.

(b) United States Treasury notes, bonds, bills, or certificates of indebtedness, or those for which the faith and credit of the United States are pledged for the payment of principal and interest.

(c) Registered state warrants or treasury notes or bonds of this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the state or by a department, board, agency, or authority of the state.

(d) Bonds, notes, warrants, or other evidences of indebtedness of any local agency within this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency, or by a department, board, agency, or authority of the local agency.

(e) Obligations issued by banks for cooperatives, federal land banks, federal intermediate credit banks, federal home loan banks, the Federal Home Loan Bank Board, the Tennessee Valley Authority, or in obligations, participations, or other instruments of, or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association; or in guaranteed portions of Small Business Administration notes; or in obligations, participations, or other instruments of, or issued by, a federal agency or a United States government-sponsored enterprise.

(f) Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers acceptances. Purchases of bankers acceptances may not exceed 270 days maturity or 40 percent of the agency's surplus money that may be invested pursuant to this section. However, no more than 30 percent of the agency's surplus funds may be invested in the bankers acceptances of any one commercial bank pursuant to this section.

This subdivision does not preclude a municipal utility district from investing any surplus money in its treasury in any manner authorized by the Municipal Utility District Act (Division 6 (commencing with Section 11501) of the Public Utilities Code).

(g) Commercial paper of "prime" quality of the highest ranking or of the highest letter and numerical rating as provided for by Moody's Investors Service, Inc., or Standard and Poor's Corporation. Eligible paper is further limited to issuing corporations that are organized and operating within the United States and having total assets in excess of five hundred million dollars ($500,000,000) and having an "A" or higher rating for the issuer's debt, other than commercial paper, if any, as provided for by Moody's Investors Service, Inc., or Standard and Poor's Corporation. Purchases of eligible commercial paper may not exceed 180 days maturity nor represent more than 10 percent of the outstanding paper of an issuing corporation. Purchases of commercial paper may not exceed 15 percent of the agency's surplus money that may be invested pursuant to this section. An additional 15 percent, or a total of 30 percent of the agency's surplus money, may be invested pursuant to this subdivision. The additional 15 percent may be so invested only if the dollar-weighted average maturity of the entire amount does not exceed 31 days. "Dollar-weighted average maturity" means the sum of the amount of each outstanding commercial paper investment multiplied by the number of days to maturity, divided by the total amount of outstanding commercial paper.

(h) Negotiable certificates of deposits issued by a nationally or state-chartered bank or a state or federal association (as defined by Section 5102 of the Financial Code) or by a state-licensed branch of a foreign bank. Purchases of negotiable certificates of deposit may not exceed 30 percent of the agency's surplus money which may be invested pursuant to this section. For purposes of this section, negotiable certificates of deposits do not come within Article 2

(commencing with Section 53630), except that the amount so invested shall be subject to the limitations of Section 53638.

(i) (1) Investments in repurchase agreements or reverse repurchase agreements of any securities authorized by this section, as long as the agreements are subject to this subdivision, including, the delivery requirements specified in this section.

(2) Investments in repurchase agreements may be made, on any investment authorized in this section, when the term of the agreement does not exceed one year. The market value of securities that underlay a repurchase agreement shall be valued at 102 percent or greater of the funds borrowed against those securities and the value shall be adjusted no less than quarterly. Since the market value of the underlying securities is subject to daily market fluctuations, the investments in repurchase agreements shall be in compliance if the value of the underlying securities is brought back up to 102 percent no later than the next business day.

(3) Reverse repurchase agreements may be utilized only when either of the following conditions are met:

(A) The security was owned or specifically committed to purchase, by the local agency, prior to December 31, 1994, and was sold using a reverse repurchase agreement on December 31, 1994.

(B) The security to be sold on reverse repurchase agreement has been owned and fully paid for by the local agency for a minimum of 30 days prior to sale; the total of all reverse repurchase agreements on investments owned by the local agency not purchased or committed to purchase, prior to December 31, 1994, does not exceed 20 percent of the base value of the portfolio; and the agreement does not exceed a term of 92 days, unless the agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement and the final maturity date of the same security.

(4) After December 31, 1994, a reverse repurchase agreement may not be entered into with securities not sold on a reverse repurchase agreement and purchased, or committed to purchase, prior to that date, as a means of financing or paying for the security sold on a reverse repurchase agreement, but may only be entered into with securities owned and previously paid for a minimum of 30 days prior to the settlement of the reverse repurchase agreement, in order to supplement the yield on securities owned and previously paid for or to provide funds for the immediate payment of a local agency obligation. Funds obtained or funds within the pool of an equivalent amount to that obtained from selling a security to a counterparty by way of a reverse repurchase agreement, on securities originally purchased subsequent to December 31, 1994, shall not be used to purchase another security with a maturity longer than 92 days from the initial settlement date of the reverse repurchase agreement, unless the reverse repurchase agreement includes a written codicil guaranteeing a minimum earning or spread

for the entire period between the sale of a security using a reverse repurchase agreement and the final maturity date of the same security. Reverse repurchase agreements specified in subparagraph (B) of paragraph (3) may not be entered into unless the percentage restrictions specified in that subparagraph are met, including the total of any reverse repurchase agreements specified in subparagraph (A) of paragraph (3).

(5) Investments in reverse repurchase agreements or similar investments in which the local agency sells securities prior to purchase with a simultaneous agreement to repurchase the security, may only be made upon prior approval of the governing body of the local agency and shall only be made with primary dealers of the Federal Reserve Bank of New York.

(6) (A) "Repurchase agreement" means a purchase of securities by the local agency pursuant to an agreement by which the counterparty seller will repurchase the securities on or before a specified date and for a specified amount and the counterparty will deliver the underlying securities to the local agency by book entry, physical delivery, or by third party custodial agreement. The transfer of underlying securities to the counterparty bank's customer book-entry account may be used for book-entry delivery.

(B) "Securities," for purpose of repurchase under this subdivision, means securities of the same issuer, description, issue date, and maturity.

(C) "Reverse repurchase agreement" means a sale of securities by the local agency pursuant to an agreement by which the local agency will repurchase the securities on or before a specified date and includes other comparable agreements.

(D) For purposes of this section, the base value of the local agency's pool portfolio shall be that dollar amount obtained by totaling all cash balances placed in the pool by all pool participants, excluding any amounts obtained through selling securities by way of reverse repurchase agreements or other similar borrowing methods.

(E) For purposes of this section, the spread is the difference between the cost of funds obtained using the reverse repurchase agreement and the earnings obtained on the reinvestment of the funds.

(j) Medium-term notes of a maximum of five years maturity issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States. Notes eligible for investment under this subdivision shall be rated in a rating category of "A" or its equivalent or better by a nationally recognized rating service. Purchases of medium-term notes may not exceed 30 percent of the agency's surplus money which may be invested pursuant to this section.

(k) (1) Shares of beneficial interest issued by diversified management companies that invest in the securities and obligations

as authorized by subdivisions (a) to (j), inclusive, or subdivisions (m) or (n) and that comply with the investment restrictions of this article and Article 2 (commencing with Section 53630). However, notwithstanding these restrictions, a counterparty to a reverse repurchase agreement is not required to be a primary dealer of the Federal Reserve Bank of New York if the company's board of directors finds that the counterparty presents a minimal risk of default, and the value of the securities underlying a repurchase agreement may be 100 percent of the sales price if the securities are marked to market daily.

(2) Shares of beneficial interest issued by diversified management companies that are money market funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1, et seq.).

(3) If investment is in shares issued pursuant to paragraph (1), the company shall have met either of the following criteria:

(A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized statistical rating organizations.

(B) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience investing in the securities and obligations authorized by subdivisions (a) to (j), inclusive, or subdivisions (m) or (n) and with assets under management in excess of five hundred million dollars ($500,000,000).

(4) If investment is in shares issued pursuant to paragraph (2), the company shall have met either of the following criteria:

(A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized statistical rating organizations.

(B) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience managing money market mutual funds with assets under management in excess of five hundred million dollars ($500,000,000).

(5) The purchase price of shares of beneficial interest purchased pursuant to this subdivision shall not include any commission that the companies may charge and shall not exceed 20 percent of the agency's surplus money that may be invested pursuant to this section. However, no more than 10 percent of the agency's surplus funds may be invested in shares of beneficial interest of any one mutual fund pursuant to paragraph (1).

(*l*) Notwithstanding anything to the contrary contained in this section, Section 53635, or any other provision of law, moneys held by a trustee or fiscal agent and pledged to the payment or security of bonds or other indebtedness, or obligations under a lease, installment sale, or other agreement of a local agency, or certificates of participation in those bonds, indebtedness, or lease installment sale,

or other agreements, may be invested in accordance with the statutory provisions governing the issuance of those bonds, indebtedness, or lease installment sale, or other agreement, or to the extent not inconsistent therewith or if there are no specific statutory provisions, in accordance with the ordinance, resolution, indenture, or agreement of the local agency providing for the issuance.

(m) Notes, bonds, or other obligations that are at all times secured by a valid first priority security interest in securities of the types listed by Section 53651 as eligible securities for the purpose of securing local agency deposits having a market value at least equal to that required by Section 53652 for the purpose of securing local agency deposits. The securities serving as collateral shall be placed by delivery or book entry into the custody of a trust company or the trust department of a bank which is not affiliated with the issuer of the secured obligation, and the security interest shall be perfected in accordance with the requirements of the Uniform Commercial Code or federal regulations applicable to the types of securities in which the security interest is granted.

(n) Any mortgage passthrough security, collateralized mortgage obligation, mortgage-backed or other pay-through bond, equipment lease-backed certificate, consumer receivable passthrough certificate, or consumer receivable-backed bond of a maximum of five years maturity. Securities eligible for investment under this subdivision shall be issued by an issuer having an "A" or higher rating for the issuer's debt as provided by a nationally recognized rating service and rated in a rating category of "AA" or its equivalent or better by a nationally recognized rating service. Purchase of securities authorized by this subdivision may not exceed 20 percent of the agency's surplus money that may be invested pursuant to this section.

SEC. 2. Section 53635 of the Government Code is amended to read:

53635. As far as possible, all money belonging to, or in the custody of, a local agency, including money paid to the treasurer or other official to pay the principal, interest, or penalties of bonds, shall be deposited for safekeeping in state or national banks, savings associations or federal associations, credit unions, or federally insured industrial loan companies in this state selected by the treasurer or other official having the legal custody of the money; or, unless otherwise directed by the legislative body pursuant to Section 53601, may be invested in the investments set forth below. A local agency purchasing or obtaining any securities described in this section, in a negotiable, bearer, registered, or nonregistered format, shall require delivery of all the securities to the local agency, including those purchased for the agency by financial advisors, consultants, or managers using the agency's funds, by book entry, physical delivery, or by third-party custodial agreement. The transfer of securities to the counterparty bank's customer book entry account may be used

for book-entry delivery. For purposes of this section, "counterparty" means the other party to the transaction. A counterparty bank's trust department or separate safekeeping department may be used for the physical delivery of the security if the security is held in the name of the local agency. Where this section specifies a percentage limitation for a particular category of investment, that percentage is applicable only at the date of purchase.

(a) Bonds issued by the local agency, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency or by a department, board, agency, or authority of the local agency.

(b) United States Treasury notes, bonds, bills, or certificates of indebtedness, or those for which the faith and credit of the United States are pledged for the payment of principal and interest.

(c) Registered state warrants or treasury notes or bonds of this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the state or by a department, board, agency, or authority of the state.

(d) Bonds, notes, warrants, or other evidences of indebtedness of any local agency within this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency, or by a department, board, agency, or authority of the local agency.

(e) Obligations issued by banks for cooperatives, federal land banks, federal intermediate credit banks, federal home loan banks, the Federal Home Loan Bank, the Tennessee Valley Authority, or in obligations, participations, or other instruments of, or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association; or in guaranteed portions of Small Business Administration notes; or in obligations, participations, or other instruments of, or issued by, a federal agency or a United States government-sponsored enterprise.

(f) Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers acceptances. Purchases of bankers acceptances may not exceed 270 days maturity or 40 percent of the agency's surplus funds which may be invested pursuant to this section. However, no more than 30 percent of the agency's surplus funds may be invested in the bankers acceptances of any one commercial bank pursuant to this section.

This subdivision does not preclude a municipal utility district from investing any surplus money in its treasury in any manner authorized by the Municipal Utility District Act, Division 6 (commencing with Section 11501) of the Public Utilities Code.

(g) Commercial paper of "prime" quality of the highest ranking or of the highest letter and numerical rating as provided for by Moody's Investors Service, Inc., or Standard and Poor's Corporation. Eligible paper is further limited to issuing corporations that are organized and operating within the United States and having total

assets in excess of five hundred million dollars ($500,000,000) and having an "A" or higher rating for the issuer's debt, other than commercial paper, if any, as provided for by Moody's Investors Service, Inc., or Standard and Poor's Corporation. Purchases of eligible commercial paper may not exceed 180 days maturity nor represent more than 10 percent of the outstanding paper of an issuing corporation. Purchases of commercial paper may not exceed 15 percent of the agency's surplus money which may be invested pursuant to this section. An additional 15 percent, or a total of 30 percent of the agency's money or money in its custody, may be invested pursuant to this subdivision. The additional 15 percent may be so invested only if the dollar-weighted average maturity of the entire amount does not exceed 31 days. "Dollar-weighted average maturity" means the sum of the amount of each outstanding commercial paper investment multiplied by the number of days to maturity, divided by the total amount of outstanding commercial paper.

(h) Negotiable certificates of deposit issued by a nationally or state-chartered bank or a savings association or federal association or a state or federal credit union or by a state-licensed branch of a foreign bank. Purchases of negotiable certificates of deposit may not exceed 30 percent of the agency's surplus money which may be invested pursuant to this section. For purposes of this section, negotiable certificates of deposit do not come within Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5, except that the amount so invested shall be subject to the limitations of Section 53638. For purposes of this section, the legislative body of a local agency and the treasurer or other official of the local agency having legal custody of the money are prohibited from depositing or investing local agency funds, or funds in the custody of the local agency, in negotiable certificates of deposit issued by a state or federal credit union if a member of the legislative body of the local agency, or an employee of the administrative officer, manager's office, budget office, auditor-controller's office, or treasurer's office of the local agency also serves on the board of directors, or any committee appointed by the board of directors, or the credit committee or supervisory committee of the state or federal credit union issuing the negotiable certificates of deposit.

(i) (1) Investments in repurchase agreements or reverse repurchase agreements of any securities authorized by this section, so long as the agreements are subject to this subdivision, including the delivery requirements specified in this section.

(2) Investments in repurchase agreements may be made, on any investment authorized in this section, when the term of the agreement does not exceed one year. The market value of securities that underlay a repurchase agreement shall be valued at 102 percent or greater of the funds borrowed against those securities and the value shall be adjusted no less than quarterly. Since the market value

of the underlying securities is subject to daily market fluctuations, the investments in repurchase agreements shall be in compliance if the value of the underlying securities is brought back up to 102 percent no later than the next business day.

(3) Reverse repurchase agreements may be utilized only when either of the following conditions are met:

(A) The security was owned or specifically committed to purchase, by the local agency, prior to repurchase agreement on December 31, 1994, and was sold using a reverse repurchase agreement on December 31, 1994.

(B) The security to be sold on reverse repurchase agreement has been owned and fully paid for by the local agency for a minimum of 30 days prior to sale, the total of all reverse repurchase agreements on investments owned by the local agency not purchased or committed to purchase, prior to December 31, 1994, does not exceed 20 percent of the base value of the portfolio, and the agreement does not exceed a term of 92 days, unless the agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement and the final maturity date of the same security.

(4) After December 31, 1994, a reverse repurchase agreement may not be entered into with securities not sold on a reverse repurchase agreement and purchased, or committed to purchase, prior to that date, as a means of financing or paying for the security sold on a reverse repurchase agreement, but may only be entered into with securities owned and previously paid for, for a minimum of 30 days prior to the settlement of the reverse repurchase agreement, in order to supplement the yield on securities owned and previously paid for or to provide funds for the immediate payment of a local agency obligation. Funds obtained or funds within the pool of an equivalent amount to that obtained from selling a security to a counterparty by way of a reverse repurchase agreement, on securities originally purchased subsequent to December 31, 1994, shall not be used to purchase another security with a maturity longer than 92 days from the initial settlement date of the reverse repurchase agreement, unless the reverse repurchase agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement and the final maturity date of the same security. Reverse repurchase agreements specified in subparagraph (B) of paragraph (3) may not be entered into unless the percentage restrictions specified in that subparagraph are met, including the total of any reverse repurchase agreements specified in subparagraph (A) of paragraph (3).

(5) Investments in reverse repurchase agreements or similar investments in which the local agency sells securities prior to purchase with a simultaneous agreement to repurchase the security, may only be made upon prior approval of the governing body of the

local agency and shall only be made with primary dealers of the Federal Reserve Bank of New York.

(6) (A) "Repurchase agreement" means a purchase of securities by the local agency pursuant to an agreement by which the counterparty seller will repurchase the securities on or before a specified date and for a specified amount and the counterparty will deliver the underlying securities to the local agency by book entry, physical delivery, or by third party custodial agreement. The transfer of underlying securities to the counterparty bank's customer book-entry account may be used for book-entry delivery.

(B) "Securities," for purpose of repurchase under this subdivision, means securities of the same issuer, description, issue date, and maturity.

(C) "Reverse repurchase agreement" means a sale of securities by the local agency pursuant to an agreement by which the local agency will repurchase the securities on or before a specified date, and includes other comparable agreements.

(D) For purposes of this section, the base value of the local agency's pool portfolio shall be that dollar amount obtained by totaling all cash balances placed in the pool by all pool participants, excluding any amounts obtained through selling securities by way of reverse repurchase agreements or other similar borrowing methods.

(E) For purposes of this section, the spread is the difference between the cost of funds obtained using the reverse repurchase agreement and the earnings obtained on the reinvestment of the funds.

(j) Medium-term notes of a maximum of five years' maturity issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States. Notes eligible for investment under this subdivision shall be rated in a rating category of "A" or its equivalent or better by a nationally recognized rating service. Purchases of medium-term notes may not exceed 30 percent of the agency's surplus money which may be invested pursuant to this section.

(k) (1) Shares of beneficial interest issued by diversified management companies that invest in the securities and obligations as authorized by subdivisions (a) to (j), inclusive, or subdivision (*l*) or (m) and that comply with the investment restrictions of this article and Article 1 (commencing with Section 53600). However, notwithstanding these restrictions, a counterparty to a reverse repurchase agreement is not required to be a primary dealer of the Federal Reserve Bank of New York if the company's board of directors finds that the counterparty presents a minimal risk of default, and the value of the securities underlying a repurchase agreement may be 100 percent of the sales price if the securities are marked to market daily.

(2) Shares of beneficial interest issued by diversified management companies that are money market funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.).

(3) If investment is in shares issued pursuant to paragraph (1), the company shall have met either of the following criteria:

(A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized statistical rating organizations.

(B) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience investing in the securities and obligations authorized by subdivisions (a) to (j), inclusive, or subdivision (*l*) or (m) and with assets under management in excess of five hundred million dollars ($500,000,000).

(4) If investment is in shares issued pursuant to paragraph (2), the company shall have met either of the following criteria:

(A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized statistical rating organizations.

(B) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience managing money market mutual funds with assets under management in excess of five hundred million dollars ($500,000,000).

(5) The purchase price of shares of beneficial interest purchased pursuant to this subdivision shall not include any commission that the companies may charge and shall not exceed 20 percent of the agency's surplus money that may be invested pursuant to this section. However, no more than 10 percent of the agency's surplus funds may be invested in shares of beneficial interest of any one mutual fund pursuant to paragraph (1).

(*l*) Notes, bonds, or other obligations which are at all times secured by a valid first priority security interest in securities of the types listed by Section 53651 as eligible securities for the purpose of securing local agency deposits having a market value at least equal to that required by Section 53652 for the purpose of securing local agency deposits. The securities serving as collateral shall be placed by delivery or book entry into the custody of a trust company or the trust department of a bank which is not affiliated with the issuer of the secured obligation, and the security interest shall be perfected in accordance with the requirements of the Uniform Commercial Code or federal regulations applicable to the types of securities in which the security interest is granted.

(m) Any mortgage passthrough security, collateralized mortgage obligation, mortgage-backed or other pay-through bond, equipment lease-backed certificate, consumer receivable passthrough certificate, or consumer receivable-backed bond of a maximum of

five years maturity. Securities eligible for investment under this subdivision shall be issued by an issuer having an "A" or higher rating for the issuer's debt as provided by a nationally recognized rating service and rated in a rating category of "AA" or its equivalent or better by a nationally recognized rating service. Purchase of securities authorized by this subdivision may not exceed 20 percent of the agency's surplus money that may be invested pursuant to this section.

CHAPTER 589

An act to amend Sections 2920, 2922, 2925, 2933, 2936, 2942, 2946, 4980.34, 4989, 4990.1, 4990.8, 4996.18, and 4996.20 of, and to add Sections 2964.3, 2966, and 4996.21 to, the Business and Professions Code, relating to healing arts.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. Section 2920 of the Business and Professions Code is amended to read:

2920. The Board of Psychology shall enforce and administer this chapter. The board shall consist of nine members, four of whom shall be public members.

This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 2922 of the Business and Professions Code is amended to read:

2922. In appointing the members of the board, except the public members, the Governor shall use his or her judgment to select psychologists who represent, as widely as possible, the varied professional interests of psychologists in California.

The Governor shall appoint two of the public members and the five licensed members of the board qualified as provided in Section 2923. 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. 3. Section 2925 of the Business and Professions Code is amended to read:

2925. The board shall elect annually a president and vice president from among its members.

SEC. 4. 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, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 5. Section 2936 of the Business and Professions Code is amended to read:

2936. The board shall adopt a program of consumer and professional education in matters relevant to the ethical practice of psychology. The board shall establish as its standards of ethical conduct relating to the practice of psychology, the code of ethics adopted and published by the American Psychological Association (APA). Those standards shall be applied by the board as the accepted standard of care in all licensing examination development and in all board enforcement policies and disciplinary case evaluations.

To facilitate consumers in receiving appropriate psychological services, all licensees and registrants shall be required to post, in a conspicuous location in their principal psychological business office, a notice which reads as follows:

"NOTICE: The Department of Consumer Affairs receives questions and complaints regarding the practice of psychology. If you have any questions or complaints, you may contact this department by calling (insert appropriate regional number) or (insert appropriate telephone number), or by writing to the following address:

Board of Psychology
1422 Howe Avenue, Ste. 22
Sacramento, California 95825-3236"

SEC. 6. Section 2942 of the Business and Professions Code is amended to read:

2942. The board may examine by written or oral examination or by both. The examination shall be given at least twice a year at the time and place and under supervision as the board may determine. The passing grades for the written and oral examinations shall be established by the board in regulations and shall be based on psychometrically sound principles of establishing minimum qualifications and levels of competency.

Examinations for a psychologist's license may be conducted by the board under a uniform examination system, and for that purpose the board may make arrangements with organizations furnishing examination material as may in its discretion be desirable.

SEC. 7. Section 2946 of the Business and Professions Code is amended to read:

2946. The board shall grant a license to any person who passes the California Jurisprudence and Professional Ethics Oral Examination and, at the time of application, is licensed or certified by a psychology licensing authority in another state if the requirements for obtaining a certificate or license in that state were substantially equivalent to the requirements of this chapter.

A psychologist certified or licensed in another state and who has made application to the board for a license in this state may perform activities and services of a psychological nature without a valid license for a period not to exceed 180 calendar days from the time of submitting his or her application or from the commencement of residency in this state, whichever first occurs.

The board at its discretion may waive those parts of the examination, including either the whole of the written or the oral examinations, when in the judgment of the board the applicant has already demonstrated competence in areas covered by those parts of the examination. The board at its discretion may waive the examination for diplomates of the American Board of Examiners in Professional Psychology or psychologists who have made a significant contribution to psychology and have had at least 10 years of experience.

SEC. 8. Section 2964.3 is added to the Business and Professions Code, to read:

2964.3. Any person required to register as a sex offender pursuant to Section 290 of the Penal Code, is not eligible for licensure or registration by the board.

SEC. 9. Section 2966 is added to the Business and Professions Code, to read:

2966. (a) A psychologist's license shall be suspended automatically during any time that the holder of the license is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the psychologist has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the psychologist of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in this section.

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing it is determined therefrom that the felony of which the licensee was convicted was substantially related to the qualifications, functions, or duties of a psychologist, the board shall

suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board. The issue of substantial relationship shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board.

(c) Notwithstanding subdivision (b), a conviction of any crime referred to in Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a psychologist and no hearing shall be held on this issue. Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of and confidence in the psychology profession.

(d) (1) Discipline or the denial of the license may be ordered in accordance with Section 2961, or the board may order the denial of the license when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. The hearing shall not be commenced until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in this section at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a psychologist. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in the conviction, including a transcript of the testimony therein, may be received in evidence.

SEC. 10. Section 4980.34 of the Business and Professions Code is amended to read:

4980.34. It is the intent of the Legislature that the board employ its resources for each and all of the following functions:

(a) The licensing of marriage, family, and child counselors, clinical social workers, and educational psychologists.

(b) The development and administration of written and oral licensing examinations and examination procedures, as specified, consistent with prevailing standards for the validation and use of licensing and certification tests. Examinations shall measure knowledge and abilities demonstrably important to the safe, effective practice of the profession.

(c) Enforcement of laws designed to protect the public from incompetent, unethical, or unprofessional practitioners.

(d) Consumer education.

SEC. 11. Section 4989 of the Business and Professions Code is amended to read:

4989. The powers and duties of the board, as set forth in this chapter, shall be subject to the review required by Division 1.2 (commencing with Section 473). The review shall be performed as if this chapter were scheduled to become inoperative on July 1, 2005, and would be repealed as of January 1, 2006, as described in Section 473.1.

SEC. 12. Section 4990.1 of the Business and Professions Code is amended to read:

4990.1. There is in the Department of Consumer Affairs a Board of Behavioral Sciences which consists of 11 members.

This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 13. Section 4990.8 of the Business and Professions Code is amended to read:

4990.8. The executive officer 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, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 14. Section 4996.18 of the Business and Professions Code is amended to read:

4996.18. (a) Any person who wishes to be credited with experience toward licensure requirements shall register with the board as an associate clinical social worker prior to obtaining that experience. The application shall be made on a form prescribed by the board and shall be accompanied by a fee of ninety dollars ($90). An applicant for registration shall (1) possess a master's degree from an accredited school or department of social work, and (2) not have committed any crimes or acts constituting grounds for denial of licensure under Section 480. On and after January 1, 1993, an applicant who possesses a master's degree from a school or

department of social work that is a candidate for accreditation by the Commission on Accreditation of the Council on Social Work Education shall be eligible, and shall be required, to register as an associate clinical social worker in order to gain experience toward licensure if the applicant has not committed any crimes or acts that constitute grounds for denial of licensure under Section 480. That applicant shall not, however, be eligible for examination until the school or department of social work has received accreditation by the Commission on Accreditation of the Council on Social Work Education.

(b) Registration as an associate clinical social worker shall expire one year from the last day of the month during which it was issued. A registration may be renewed annually after initial registration by filing an application for renewal and paying a renewal fee of seventy-five dollars ($75) on or before the date on which the registration expires. Each person who registers or has registered as an associate clinical social worker, may retain that status for a total of six years.

(c) Notwithstanding the limitations on the length of an associate registration in subdivision (b), an associate may apply for, and the board shall grant, one-year extensions beyond the six-year period when no grounds exist for denial, suspension, or revocation of the registration pursuant to Section 480. An associate shall be eligible to receive a maximum of three one-year extensions. An associate who practices pursuant to an extension shall not practice independently and shall comply with all requirements of this chapter governing experience, including supervision, even if the associate has completed the hours of experience required for licensure. Each extension shall commence on the date when the last associate renewal or extension expires. An application for extension shall be made on a form prescribed by the board and shall be accompanied by a renewal fee of fifty dollars ($50). An associate who is granted this extension may work in all work settings authorized pursuant to this chapter.

(d) Experience gained before January 1, 1990, shall be credited toward the licensure requirements so long as the applicant applies for registration not later than December 31, 1989, and that registration is thereafter granted by the board.

(e) A registrant shall not provide clinical social work services to the public for a fee, monetary or otherwise, except as an employee of the licensed person by whom the registrant is being supervised.

(f) A registrant shall inform each client or patient prior to performing any professional services that he or she is unlicensed and is under the supervision of a licensed professional.

(g) Any experience obtained under the supervision of a spouse or relative by blood or marriage shall not be credited toward the required hours of supervised experience. Any experience obtained under the supervision of a supervisor with whom the applicant has

a personal relationship that undermines the authority or effectiveness of the supervision shall not be credited toward the required hours of supervised experience.

(h) An applicant who possesses a master's degree from an approved school or department of social work shall be able to apply experience the applicant obtained during the time the approved school or department was in candidacy status by the Commission on Accreditation of the Council on Social Work Education toward the licensure requirements, if the experience meets the requirements of Section 4996.20. This subdivision shall apply retroactively to persons who possess a master's degree from an approved school or department of social work and who obtained experience during the time the approved school or department was in candidacy status by the Commission on Accreditation of the Council on Social Work Education.

(i) The board shall report to the Legislature on or before October 1, 1999, concerning its efforts to identify educational issues that relate to licensure.

SEC. 15. Section 4996.20 of the Business and Professions Code is amended to read:

4996.20. The experience required by subdivision (c) of Section 4996.2 shall meet the following criteria:

(a) An applicant shall have at least 3,200 hours of post-master's experience, supervised by a licensed clinical social worker, in providing clinical social work services consisting of psychosocial diagnosis; assessment; treatment, including psychotherapy and counseling; client-centered advocacy; consultation; and evaluation as permitted by Section 4996.9. For persons applying for licensure on or after January 1, 1992, this experience shall have been gained in not less than two nor more than six years and shall have been gained within the six years immediately preceding the date on which the application for licensure was filed. The board may credit experience gained more than six years prior to the date on which an application was filed upon a showing of good cause or where the applicant is licensed and currently practicing in another state.

(b) Notwithstanding the requirements of subdivision (a) that 3,200 hours of experience shall be gained under the supervision of a licensed clinical social worker, up to 1,000 hours of the required experience may be gained under the supervision of a licensed mental health professional acceptable to the board.

For purposes of this section, "supervision" means responsibility for and control of the quality of social work services being provided. Consultation shall not be considered to be supervision. Supervision shall include at least one hour of direct supervision for each week of experience claimed. Not less than one-half of the hours of required supervision shall be individual supervision. The remaining hours may be group supervision. "Individual supervision" means one supervisor meets with one supervisee at a time. "Group supervision" means a

supervisor meets with a group of no more than eight supervisees at a time.

(c) For purposes of this section, a "private practice setting" is any setting other than a governmental entity, a school, college or university, a nonprofit and charitable corporation or a licensed health facility. Employment in a private practice setting shall not commence until the applicant has been registered as an associate clinical social worker. A registrant employed in a private practice setting shall not:

(1) Pay his or her employer for supervision, and shall receive fair remuneration from his or her employer.

(2) Receive any remuneration from patients or clients and shall only be paid by his or her employer.

(3) Perform services at any place except where the registrant's employer regularly conducts business.

(4) Have any proprietary interest in the employer's business.

(d) A person employed in a setting other than a private practice setting may obtain supervision from a person not employed by the registrant's employer if that person has signed a written contract with the employer to take supervisory responsibility for the registrant's social work services.

(e) This section shall apply only to persons who apply for registration on or before December 31, 1998.

SEC. 16. Section 4996.21 is added to the Business and Professions Code, to read:

4996.21. The experience required by subdivision (c) of Section 4996.2 shall meet the following criteria:

(a) On or after January 1, 1999, a registrant shall have at least 3,200 hours of post-master's experience, supervised by a licensed clinical social worker, in providing clinical social work services as permitted by Section 4996.9. Experience shall consist of the following:

(1) A minimum of 2,000 hours in psychosocial diagnosis, assessment, and treatment, including psychotherapy and counseling.

(2) A maximum of 1,200 hours in client-centered advocacy, consultation, evaluation, and research.

(3) Experience shall have been gained in not less than two nor more than six years and shall have been gained within the six years immediately preceding the date on which the application for licensure was filed.

(b) Notwithstanding the requirements of subdivision (a), up to 1,000 hours of the required experience may be gained under the supervision of a licensed mental health professional.

(1) Supervision means responsibility for and control of the quality of clinical social work services being provided.

(2) Consultation shall not be considered to be supervision.

(3) Supervision shall include at least one hour of direct supervisor contact for each week of experience claimed and shall include at least one hour of direct supervisor contact for every 10 hours of client

contact in each setting where experience is gained. Not less than one-half of the hours of required supervision shall be individual supervision. The remaining hours may be group supervision. For purposes of this section, "one hour of direct supervisor contact" means one hour of face-to-face contact on an individual basis or two hours of face-to-face contact in a group setting of not more than eight persons.

(4) The supervisor and the supervisee shall develop a supervisory plan that describes the goals and objectives of supervision. These goals shall include the ongoing assessment of strengths and limitations and the assurance of practice in accordance with the laws and regulations. The associate shall submit to the board the initial supervisory plan within 30 days of commencement of supervision. The supervisor shall submit to the board within 30 days of termination of supervision evidence of satisfactorily completed supervised experience by the supervisee.

(c) A "private practice setting" is any setting other than a governmental entity, a school, college, or university, a nonprofit and charitable corporation, a licensed health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code, a social rehabilitation facility or a community treatment facility, as defined in subdivision (a) of Section 1502 of the Health and Safety Code, a pediatric day health and respite care facility, as defined in Section 1760.2 of the Health and Safety Code, or a licensed alcoholism or drug abuse recovery or treatment facility, as defined in Section 11834.02 of the Health and Safety Code.

(1) In a setting that is not a private practice, a registrant shall be employed on either a voluntary or paid basis.

(2) If volunteering, the registrant shall provide the board with a letter from his or her employer verifying his or her voluntary status upon application for licensure.

(3) If employed, the registrant shall provide the board with copies of his or her W-2 tax forms for each year of experience claimed upon application for licensure.

(d) Employment in a private practice setting shall not commence until the applicant has been registered as an associate clinical social worker. A registrant employed in a private practice setting shall not do any of the following:

(1) Pay his or her employer or supervisor for supervision, and shall receive fair remuneration from his or her employer.

(2) Receive any remuneration from patients or clients and shall only be paid by his or her employer.

(3) Perform services at any place except where the registrant's employer regularly conducts business.

(4) Have any proprietary interest in the employer's business.

(e) A person employed in a setting other than a private practice setting may obtain supervision from a person not employed by the registrant's employer if that person has signed a written agreement

with the employer to take supervisory responsibility for the registrant's social work services.

CHAPTER 590

An act to amend Section 56835 of, and to add Sections 56111.14, 56700.3, 56800.3, 56828.5, 56842.7, 56844.2, 57082.5, and 57330.5 to, the Government Code, relating to local agencies.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. Section 56111.14 is added to the Government Code, to read:

56111.14. (a) Notwithstanding Section 56110, upon approval of the commission, the City of Coalinga may annex noncontiguous territory of not more than 640 acres in area, which territory is located in the County of Fresno and 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 Coalinga.

(b) If territory is annexed to the City of Coalinga 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 Coalinga pursuant to this section becomes contiguous to the city, the limitations imposed by this section shall cease to apply.

(e) The City of Coalinga may enter into an agreement with any other city or the County of Fresno under which the City of Coalinga apportions any increase in state subventions resulting from the annexation of territory pursuant to this section.

SEC. 1.5. Section 56700.3 is added to the Government Code, to read:

56700.3. If the proposal would result in the annexation to a city of land that is subject to a contract executed pursuant to the Williamson Act (Chapter 7 (commencing with Section 51200) of Division 1),

then the petition shall state whether the city shall succeed to the contract pursuant to Section 51243 or whether the city intends to exercise its option to not succeed to the contract pursuant to Section 51243.5.

SEC. 2. Section 56800.3 is added to the Government Code, to read:

56800.3. If the proposal would result in the annexation to a city of land that is subject to a contract executed pursuant to the Williamson Act (Chapter 7 (commencing with Section 51200) of Division 1), then the resolution shall state whether the city shall succeed to the contract pursuant to Section 51243 or whether the city intends to exercise its option to not succeed to the contract pursuant to Section 51243.5.

SEC. 3. Section 56828.5 is added to the Government Code, to read:

56828.5. Within 10 days after receiving a proposal that would result in the annexation to a city of land that is subject to a contract executed pursuant to the Williamson Act (Chapter 7 (commencing with Section 51200) of Division 1), the executive officer shall notify the Director of Conservation of the proposal. The notice shall include the contract number, the date of the contract's execution, and a copy of any protest that the city had filed pursuant to Section 51243.5.

SEC. 4. Section 56835 of the Government Code is amended to read:

56835. The executive officer shall also give mailed notice of any hearing by the commission, as provided in Sections 56155 to 56157, inclusive, by mailing notice of the hearing to all of the following persons and entities:

(a) To each affected local agency.

(b) To the chief petitioners, if any.

(c) To each person who has filed a written request for special notice with the executive officer.

(d) If the proposal is for any annexation or detachment, or for a reorganization providing for the formation of a new district, to each city within three miles of the exterior boundaries of the territory proposed to be annexed, detached, or formed into a new district.

(e) If the proposal is to incorporate a new city or for the formation of a district, to the affected county.

(f) If the proposal includes the formation of, or annexation of territory to, a fire protection district formed pursuant to the Fire Protection District Law of 1987, Part 3 (commencing with Section 13800) of Division 12 of the Health and Safety Code, and all or part of the affected territory has been classified as a state responsibility area, to the Director of Forestry and Fire Protection.

(g) If the proposal would result in the annexation to a city of land that is subject to a contract executed pursuant to the Williamson Act (Chapter 7 (commencing with Section 51200) of Division 1), to the Director of Conservation.

SEC. 5. Section 56842.7 is added to the Government Code, to read:

56842.7. If a change of organization or reorganization would result in the annexation to a city of land that is subject to a contract executed pursuant to the Williamson Act (Chapter 7 (commencing with Section 51200) of Division 1), the commission shall determine one of the following:

(a) That the city shall succeed to the rights, duties, and powers of the county pursuant to Section 51243, or

(b) That the city may exercise its option to not succeed to the rights, duties, and powers of the county pursuant to Section 51243.5.

SEC. 6. Section 56844.2 is added to the Government Code, to read:

56844.2. If any commission order approving or conditionally approving a change of organization or reorganization would result in the annexation to a city of land that is subject to a contract executed pursuant to the Williamson Act (Chapter 7 (commencing with Section 51200) of Division 1), for which the commission has determined pursuant to Section 56842.7 that the city shall succeed to the contract, the commission shall impose a condition that requires the city to adopt the rules and procedures required by the Williamson Act, including but not limited to the rules and procedures required by Sections 51231, 51237, and 51237.5.

SEC. 7. Section 57082.5 is added to the Government Code, to read:

57082.5. With respect to any proceeding that would result in the annexation to a city of land that is subject to a contract executed pursuant to the Williamson Act (Chapter 7 (commencing with Section 51200) of Division 1), for which the commission has determined pursuant to Section 56842.7 that the city may exercise its option to not succeed to the contract, the conducting authority shall include within its resolution ordering the annexation of the territory a finding regarding whether the city intends to not succeed to the contract.

SEC. 8. Section 57330.5 is added to the Government Code, to read:

57330.5. (a) If a city annexes land that is subject to a contract executed pursuant to the Williamson Act (Chapter 7 (commencing with Section 51200) of Division 1), and the city succeeds to the contract pursuant to either Section 51243 or Section 51243.5, then on and after the effective date of the annexation, the city has all of the rights, duties, and powers imposed by that contract.

(b) If a city annexes land that is subject to a contract executed pursuant to the Williamson Act (Chapter 7 (commencing with Section 51200) of Division 1), and the city exercises its option to not succeed to the contract pursuant to Section 51243.5, then the city shall record a certificate of contract termination pursuant to that section.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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

SEC. 10. This act shall become operative only if Senate Bill No. 1835 of the 1997–98 Regular Session becomes effective on or before January 1, 1999.

CHAPTER 591

An act to amend Section 25105.5 of the Government Code, to amend Section 4582.8 of the Public Resources Code, and to amend Sections 64, 75.21, 452, and 5802 of, and to add Sections 207.1 and 38116 to, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 17, 1998. Filed with Secretary of State September 18, 1998.]

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

SECTION 1. Section 25105.5 of the Government Code is amended to read:

25105.5. The clerk of the board of supervisors may, without complying with any other provision of law, destroy records consisting of claims against the county and claims against special districts for which the board of supervisors is the governing body, whenever the claims have been retained by the clerk for a period of not less than five years after final action on the claim. The clerk of the board of supervisors may destroy records consisting of assessment appeal applications when five years have elapsed since the final action on the application. The clerk may destroy the records three years after the final action on the application, if the records consisting of assessment appeal applications have been microfilmed, microfiched, imaged, or otherwise preserved on a medium that provides access to the documents, in accordance with Section 25105.

As used in this section "final action" means, in the case of an assessment appeals application, the date of the final decision by the assessment appeals board and, in the case of a claim, the date of payment or settlement of the claim, or denial or approval of the claim by or in behalf of the board of supervisors or by operation of law,

whichever occurs first, if there is no action pending involving the application or claim.

SEC. 2. Section 4582.8 of the Public Resources Code is amended to read:

4582.8. Within 10 days from the date that a timber harvesting plan is determined to be in conformance under Section 4582.7, or within 10 days from the date of receipt of a notice of timber operations, a nonindustrial timber harvest notice, a notice of exemption to convert less than three acres to a nontimber use pursuant to Section 4584, or an emergency notice filed pursuant to Section 4592, the director shall transmit copies thereof to the State Board of Equalization. Any notice of exemption or notice of emergency transmitted to the State Board of Equalization pursuant to this section shall include, among other things, an estimate of the timber owner as to whether the timber to be harvested pursuant to the notice will or will not be exempt from timber yield tax pursuant to Section 38116 of the Revenue and Taxation Code as interpreted and implemented by the State Board of Equalization.

SEC. 3. Section 64 of the Revenue and Taxation Code is amended to read:

64. (a) Except as provided in subdivision (i) of Section 61 and subdivisions (c) and (d) of this section, the purchase or transfer of ownership interests in legal entities, such as corporate stock or partnership or limited liability company interests, shall not be deemed to constitute a transfer of the real property of the legal entity. This subdivision is applicable to the purchase or transfer of ownership interests in a partnership without regard to whether it is a continuing or a dissolved partnership.

(b) Any corporate reorganization, where all of the corporations involved are members of an affiliated group, and that qualifies as a reorganization under Section 368 of the United States Internal Revenue Code and that is accepted as a nontaxable event by similar California statutes, or any transfer of real property among members of an affiliated group, or any reorganization of farm credit institutions pursuant to the federal Farm Credit Act of 1971 (Public Law 92-181), as amended, shall not be a change of ownership. The taxpayer shall furnish proof, under penalty of perjury, to the assessor that the transfer meets the requirements of this subdivision.

For purposes of this subdivision "affiliated group" means one or more chains of corporations connected through stock ownership with a common parent corporation if both of the following conditions are met:

(1) One hundred percent of the voting stock, exclusive of any share owned by directors, of each of the corporations, except the parent corporation, is owned by one or more of the other corporations.

(2) The common parent corporation owns, directly, 100 percent of the voting stock, exclusive of any shares owned by directors, of at least one of the other corporations.

(c) (1) When a corporation, partnership, limited liability company, other legal entity, or any other person obtains control through direct or indirect ownership or control of more than 50 percent of the voting stock of any corporation, or obtains a majority ownership interest in any partnership, limited liability company, or other legal entity through the purchase or transfer of corporate stock, partnership, or limited liability company interest, or ownership interests in other legal entities, including any purchase or transfer of 50 percent or less of the ownership interest through which control or a majority ownership interest is obtained, the purchase or transfer of that stock or other interest shall be a change of ownership of the real property owned by the corporation, partnership, limited liability company, or other legal entity in which the controlling interest is obtained.

(2) On or after January 1, 1996, when an owner of a majority ownership interest in any partnership obtains all of the remaining ownership interests in that partnership or otherwise becomes the sole partner, the purchase or transfer of the minority interests, subject to the appropriate application of the step-transaction doctrine, shall not be a change in ownership of the real property owned by the partnership.

(d) If property is transferred on or after March 1, 1975, to a legal entity in a transaction excluded from change in ownership by paragraph (2) of subdivision (a) of Section 62, then the persons holding ownership interests in that legal entity immediately after the transfer shall be considered the "original coowners." Whenever shares or other ownership interests representing cumulatively more than 50 percent of the total interests in the entity are transferred by any of the original coowners in one or more transactions, a change in ownership of that real property owned by the legal entity shall have occurred, and the property that was previously excluded from change in ownership under the provisions of paragraph (2) of subdivision (a) of Section 62 shall be reappraised.

The date of reappraisal shall be the date of the transfer of the ownership interest representing individually or cumulatively more than 50 percent of the interests in the entity.

A transfer of shares or other ownership interests that results in a change in control of a corporation, partnership, limited liability company, or any other legal entity is subject to reappraisal as provided in subdivision (c) rather than this subdivision.

(e) In order to assist in the determination of whether a change of ownership has occurred under subdivisions (c) and (d), the Franchise Tax Board shall include a question in substantially the following form on returns for partnerships, banks, and corporations

(except tax-exempt organizations):

If the corporation (or partnership or limited liability company) owns real property in California, has cumulatively more than 50 percent of the voting stock (or more than 50 percent of total interest in both partnership or limited liability company capital and partnership or limited liability company profits) (1) been transferred by the corporation (or partnership or limited liability company) since March 1, 1975, or (2) been acquired by another legal entity or person during the year? (See instructions.)

If the entity answers "yes" to (1) or (2) in the above question, then the Franchise Tax Board shall furnish the names and addresses of that entity and of the stock or partnership or limited liability company ownership interest transferees to the State Board of Equalization.

SEC. 4. Section 75.21 of the Revenue and Taxation Code is amended to read:

75.21. (a) Exemptions shall be applied to the amount of the supplemental assessment, provided that the property is not receiving any other exemption on either the current roll or the roll being prepared except as provided for in subdivision (b), that the assessee is eligible for the exemption, and that in those instances in which the provisions of this division require the filing of claims for exemption, the assessee makes a claim for the exemption for the next succeeding lien date.

(b) If the property received an exemption on the current roll or the roll being prepared and the assessee on the supplemental roll is eligible for an exemption and in those instances in which the provisions of this division require the filing of claims for exemption, the assessee makes a claim for the next succeeding lien date for an exemption of a greater amount, then the difference in the amount between the two exemptions shall be applied to the supplemental assessment.

(c) For purposes of this section, any claim for the homeowners' exemption, veterans' exemption, or disabled veterans' exemption previously filed by the owner of a dwelling, granted and in effect, constitutes the claim or claims for that exemption required in this section. In the event that no claim for the homeowners' exemption, veterans' exemption, or disabled veterans' exemption is in effect, a claim for any of those exemptions for a single supplemental assessment for a change in ownership or new construction occurring on or after June 1, up to and including December 31, shall apply to that assessment; a claim for any of those exemptions for the two supplemental assessments for a change in ownership or new construction occurring on or after January 1, up to and including May 31, one for the current fiscal year and one for the following fiscal year, shall apply to those assessments. In either case, if granted, the claim shall remain in effect until title to the property changes, the owner

does not occupy the home as his or her principal place of residence on the lien date, or the property is otherwise ineligible pursuant to Section 205, 205.5, or 218.

SEC. 5. Section 207.1 is added to the Revenue and Taxation Code, to read:

207.1. Personal property leased to a church and used exclusively for the purposes described in Section 207 shall be deemed to be used exclusively for religious purposes under that section.

The exemption provided by this section is granted pursuant to the authority in Section 2 of Article XIII of the California Constitution.

SEC. 6. Section 452 of the Revenue and Taxation Code is amended to read:

452. For the assessment year beginning in 1968 and each assessment year thereafter, the board shall prescribe in detail the content of property statements, including the specific wording, to be used by all assessors in the several counties, and cities and counties, and shall notify assessors of those specifications no later than the August 31 prior to the tax lien date on which they become effective. Each assessor shall incorporate the specifications on the exact form he or she proposes to use and submit that form to the board for approval prior to use. The property statement shall not include any question that is not germane to the assessment function.

SEC. 7. Section 5802 of the Revenue and Taxation Code, as amended by Section 14 of Chapter 1222 of the Statutes of 1994, is amended to read:

5802. (a) Except as provided in subdivisions (b) and (c), "base year value" as used in this part means the full cash value of a manufactured home on the date the manufactured home is purchased or changes ownership. If the manufactured home undergoes any new construction after it is purchased or changes ownership, the base year value of the new construction is its full cash value on the date on which the new construction is completed, and if uncompleted, on the lien date.

(b) The base year value of a manufactured home for which the license fee is delinquent shall be its full cash value on the lien date for the fiscal year in which it is first enrolled.

(c) The base year value of a manufactured home converted pursuant to Section 18119 of the Health and Safety Code from taxation under Part 5 (commencing with Section 10701) of Division 2 to taxation under this part shall be its full cash value on the lien date for the fiscal year in which that manufactured home is first enrolled.

(d) Notwithstanding any other provision of law, the assessor shall determine the base year value of a manufactured home, located in a resident-owned mobilehome park or a rental park in the process of being changed to resident ownership, that is converted to property taxation by the registered owner pursuant to Section 18555 of the Health and Safety Code, so that the property taxes levied, after adjustment for any applicable exemption, shall be the same amount

as the vehicle license fee that was imposed for the registration year in which the home was converted to property taxation.

(e) This section shall remain in effect until January 1, 1999, and on that date is repealed.

SEC. 8. Section 5802 of the Revenue and Taxation Code, as amended by Section 15 of Chapter 1222 of the Statutes of 1994, is amended to read:

5802. (a) Except as provided in subdivisions (b) and (c), "base year value" as used in this part means the full cash value of a manufactured home on the date the manufactured home is purchased or changes ownership. If the manufactured home undergoes any new construction after it is purchased or changes ownership, the base year value of the new construction is its full cash value on the date on which the new construction is completed, and if uncompleted, on the lien date.

(b) The base year value of a manufactured home for which the license fee is delinquent shall be its full cash value on the lien date for the fiscal year in which it is first enrolled.

(c) The base year value of a manufactured home converted pursuant to Section 18119 of the Health and Safety Code from taxation under Part 5 (commencing with Section 10701) of Division 2 to taxation under this part shall be its full cash value on the lien date for the fiscal year in which that manufactured home is first enrolled.

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

SEC. 9. Section 38116 is added to the Revenue and Taxation Code, to read:

38116. (a) Subject to the limitation in subdivision (b), there is exempted from the tax imposed by this part timber whose immediate harvest value is so low that, if not exempt, the tax on the timber would amount to less than the cost of administering and collecting the tax, as determined by the board by rule. The board, after consultation with the Timber Advisory Committee, shall establish by rule the level at which the tax that would apply is less than the cost to administer and collect the tax.

(b) The board shall have no authority to exempt timber with an estimated immediate harvest value of more than three thousand dollars ($3,000).

CHAPTER 592

An act to add Section 538c to the Penal Code, relating to newspapers.

[Approved by Governor September 18, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 538c is added to the Penal Code, to read:

538c. (a) Except as provided in subdivision (c), any person who attaches or inserts an unauthorized advertisement in a newspaper, and who redistributes it to the public or who has the intent to redistribute it to the public, is guilty of the crime of theft of advertising services which shall be punishable as a misdemeanor.

(b) As used in this section, "unauthorized advertisement" means any form of representation or communication, including any handbill, newsletter, pamphlet, or notice that contains any letters, words, or pictorial representation that is attached to or inserted in a newspaper without a contractual agreement between the publisher and an advertiser.

(c) Any person who acts in concert with another to attach or insert an unpaid advertisement in violation of subdivision (a) is guilty of a misdemeanor.

(d) This section shall apply to any newspaper that is offered for retail sale or is distributed without charge.

(e) This section does not apply if the publisher or authorized distributor of the newspaper consents to the attachment or insertion of the advertisement.

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 593

An act to amend Sections 7000, 7005, and 7005.5 of the Penal Code, relating to corrections.

[Approved by Governor September 18, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 7000 of the Penal Code is amended to read:

7000. (a) The Department of Corrections shall prepare plans for, and construct facilities and renovations included within, its master plan for which funds have been appropriated by the Legislature.

(b) "Master plan" means the department's "Facility Requirements Plan," dated April 7, 1980, and any subsequent revisions.

SEC. 2. Section 7005 of the Penal Code is amended to read:

7005. Notwithstanding any other provision of law, mitigation funding shall be distributed to any local education agency, or any city, county, or city and county as a result of the construction of new permanent prison housing facilities, the activation of temporary beds as part of the Emergency Bed Program authorized by the Budget Acts of 1995 and 1996, and any future emergency bed expansions by the Department of Corrections if funds for that purpose are appropriated to the department in the annual Budget Act or any other act approved by the Legislature.

SEC. 3. Section 7005.5 of the Penal Code is amended to read:

7005.5. (a) Any funds appropriated for mitigation costs pursuant to Section 7005 shall be divided as follows: one-half for allocation among any impacted local education agency, and one-half for allocation among any impacted city, county, or city and county.

(b) Any funds appropriated for mitigation of costs of a city, county, or city and county shall be divided among any city, county, or city and county impacted by the prison construction or expansion.

(c) Funds to be allocated among any impacted city, county, or city and county shall be paid directly to each impacted entity by the Department of Corrections upon receipt of resolutions adopted by the governing body of each impacted city, county, or city and county indicating agreement by an entity regarding the specific allocations to that entity. Only a local impacted entity whose current approved sphere of influence includes the site of increased inmate housing capacity shall be deemed to be a jurisdiction eligible for mitigation pursuant to Section 7005.

(d) Funds to be allocated among any impacted local education agency shall be disbursed to the county superintendent of schools for allocation among any impacted local education agency.

CHAPTER 594

An act to amend Section 44237 of the Education Code, relating to school employees.

[Approved by Governor September 18, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 44237 of the Education Code is amended to read:

44237. (a) Every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level shall require each applicant for employment in a position requiring contact with minor pupils who does not possess a valid California state teaching credential, or is not currently licensed by another state agency that requires a criminal record summary, to submit two sets of fingerprints to the Department of Justice for the purpose of obtaining a criminal record summary from the Department of Justice and the Federal Bureau of Investigation.

(b) (1) As used in this section, "employer" means every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level.

(2) This section does not apply to a parent or legal guardian working exclusively with his or her child or children.

(c) (1) Upon receiving the identification cards, the Department of Justice shall ascertain whether the applicant has been arrested or convicted of any crime insofar as that fact can be ascertained from information available to the department and forward the information to the employer designated by the applicant submitting the fingerprints no more than 15 working days after receiving the identification cards. The Department of Justice shall not forward records of criminal proceedings that did not result in a conviction but shall forward information on arrests pending adjudication.

(2) Upon implementation of an electronic fingerprinting system with terminals located statewide and managed by the Department of Justice, the Department of Justice shall ascertain the information required pursuant to this subdivision within three working days. If the Department of Justice cannot ascertain the information required pursuant to this subdivision within three working days, the department shall notify the employer designated by the applicant submitting the fingerprints that it cannot so ascertain the required information. This notification shall be delivered by telephone and shall be confirmed in writing and delivered to the employer designated by the applicant submitting the fingerprints by first-class mail. If the employer designated by the applicant submitting the fingerprints is notified by the Department of Justice that it cannot ascertain the required information about a person, the employer may not employ that person until the Department of Justice ascertains that information. At its discretion, the Department of Justice may forward one copy of the fingerprint cards submitted to any other bureau of investigation it may deem necessary in order to verify any record of previous arrests or convictions of the applicant.

(d) An employer shall not employ a person until the Department of Justice completes its obligations as set forth in this section.

(e) (1) A person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level shall not employ a person who has been convicted of a violent or serious felony or a person who would be prohibited from employment by a public school district pursuant to any provision of this code because of his or her conviction for any crime.

(2) A person who would be prohibited from employment by a private school pursuant to paragraph (1) may not, on or after July 1, 1999, own or operate a private school offering instruction on the elementary or high school level.

(f) This section applies to any violent or serious offense which, if committed in this state, would have been punishable as a violent or serious felony.

(g) For purposes of this section, a violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code and a serious felony is any felony listed in subdivision (c) of Section 1192.7 of the Penal Code.

(h) Notwithstanding subdivision (e), a person shall not be denied employment or terminated from employment solely on the basis that the person has been convicted of a violent or serious felony if the person has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(i) Notwithstanding subdivision (e), a person shall not be denied employment or terminated from employment solely on the basis that the person has been convicted of a serious felony that is not also a violent felony if that person can prove to the sentencing court of the offense in question, by clear and convincing evidence, that he or she has been rehabilitated for the purposes of school employment for at least one year. If the offense in question occurred outside this state, then the person may seek a finding of rehabilitation from the court in the county in which he or she is a resident.

(j) The Commission on Teacher Credentialing shall send on a monthly basis to each private school a list of all teachers who have had their state teaching credential revoked or suspended. The list shall be identical to the list compiled for public schools in the state. The commission shall also send on a quarterly basis a complete and updated list of all teachers who have had their teaching credentials revoked or suspended, excluding teachers who have had their credentials reinstated, or who are deceased.

(k) The Department of Justice may charge each applicant for a criminal record summary a reasonable fee to cover costs associated with the processing, reviewing, and supplying of the criminal record summary as required by this section. In no event shall the fee exceed the actual costs incurred by the department.

SEC. 2. Section 44237 of the Education Code is amended to read:

44237. (a) Every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level shall require each applicant for employment in a position requiring contact with minor pupils who does not possess a valid credential issued by the Commission on Teacher Credentialing or is not currently licensed by another state agency that requires a criminal record summary that directly relates to services provided in a facility described in this section and has background clearance criteria that meets or exceeds the requirements of this section, to submit two sets of fingerprints prepared for submittal by the employer to the Department of Justice for the purpose of obtaining criminal record summary information from the Department of Justice and the Federal Bureau of Investigation.

(b) (1) As used in this section, "employer" means every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level.

(2) As used in this section, "employment" means the act of engaging the services of a person, who will have contact with pupils, to work in a position at a private school at the elementary or high school level on or after September 30, 1997, on a regular, paid full-time basis, regular, paid part-time basis, or paid full- or part-time seasonal basis.

(3) As used in this section, "applicant" means any person who is seriously being considered for employment by an employer.

(4) This section does not apply to a secondary school pupil working at the school he or she attends or a parent or legal guardian working exclusively with his or her child or children.

(c) (1) Upon receiving the identification cards, the Department of Justice shall ascertain whether the applicant has been arrested or convicted of any crime insofar as that fact can be ascertained from information available to the department and forward the information to the employer submitting the fingerprints no more than 15 working days after receiving the identification cards. The Department of Justice shall not forward information regarding criminal proceedings that did not result in a conviction but shall forward information on arrests pending adjudication.

(2) Upon implementation of an electronic fingerprinting system with terminals located statewide and managed by the Department of Justice, the Department of Justice shall ascertain the information required pursuant to this subdivision within three working days. If the Department of Justice cannot ascertain the information required pursuant to this subdivision within three working days, the department shall notify the employer submitting the fingerprints that it cannot so ascertain the required information. This notification shall be delivered by telephone or electronic mail to the employer submitting the fingerprints. If the employer submitting the fingerprints is notified by the Department of Justice that it cannot

ascertain the required information about a person, the employer may not employ that person until the Department of Justice ascertains that information.

(3) The Department of Justice shall review the criminal record summary it obtains from the Federal Bureau of Investigation to ascertain whether an applicant for employment has a conviction, or an arrest pending final adjudication, for any sex offense, controlled substance offense, crime of violence, or serious or violent felony. The Department of Justice shall provide written notification to the private school employer only as to whether an applicant for employment has any convictions, or arrests pending final adjudication, for any of these crimes.

(d) An employer shall not employ a person until the Department of Justice completes its check of the state criminal history file as set forth in this section.

(e) (1) A person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level shall not employ a person who has been convicted of a violent or serious felony or a person who would be prohibited from employment by a public school district pursuant to any provision of this code because of his or her conviction for any crime.

(2) A person who would be prohibited from employment by a private school pursuant to paragraph (1) may not, on or after July 1, 1999, own or operate a private school offering instruction on the elementary or high school level.

(f) An employer shall request subsequent arrest service from the Department of Justice as provided under Section 11105.2 of the Penal Code.

(g) This section applies to any violent or serious offense which, if committed in this state, would have been punishable as a violent or serious felony.

(h) For purposes of this section, a violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code and a serious felony is any felony listed in subdivision (c) of Section 1192.7 of the Penal Code.

(i) Notwithstanding subdivision (e), a person shall not be denied employment or terminated from employment solely on the basis that the person has been convicted of a violent or serious felony if the person has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(j) Notwithstanding subdivision (e), a person shall not be denied employment or terminated from employment solely on the basis that the person has been convicted of a serious felony that is not also a violent felony if that person can prove to the sentencing court of the offense in question, by clear and convincing evidence, that he or she has been rehabilitated for the purposes of school employment for at least one year. If the offense in question occurred outside this state,

then the person may seek a finding of rehabilitation from the court in the county in which he or she is a resident.

(k) The Commission on Teacher Credentialing shall send on a monthly basis to each private school a list of all teachers who have had their state teaching credential revoked or suspended. The list shall be identical to the list compiled for public schools in the state. The commission shall also send on a quarterly basis a complete and updated list of all teachers who have had their teaching credentials revoked or suspended, excluding teachers who have had their credentials reinstated, or who are deceased.

(*l*) The Department of Justice may charge a reasonable fee to cover costs associated with the processing, reviewing, and supplying of the criminal record summary as required by this section. In no event shall the fee exceed the actual costs incurred by the department.

(m) Where reasonable access to the statewide, electronic fingerprinting network is available, the Department of Justice may mandate electronic submission of the fingerprints and related information required by this section.

(n) All information obtained from the Department of Justice is confidential. Agencies handling Department of Justice information shall ensure the following:

(1) No recipient shall disclose its contents or provide copies of information.

(2) Information received shall be stored in a locked file separate from other files, and shall only be accessible to the custodian of records.

(3) Information received shall be destroyed upon the hiring determination in accordance with subdivision (a) of Section 708 of Title 11 of the California Code of Regulations.

(4) Compliance with destruction, storage, dissemination, auditing, backgrounding, and training requirements as set forth in Sections 700 through 708, inclusive, of Title 11 of the California Code of Regulations and Section 11077 of the Penal Code governing the use and security of criminal offender record information is the responsibility of the entity receiving the information from the Department of Justice.

SEC. 3. Section 2 of this bill incorporates amendments to Section 44237 of the Education Code proposed by both this bill and AB 2102. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 44237 of the Education Code, and (3) this bill is enacted after AB 2102, in which case Section 44237 of the Education Code as amended by AB 2102, shall remain operative only until the operative date of this bill, at which time Section 2 of this bill shall become operative, and Section 1 of this bill shall not become operative.

CHAPTER 595

An act to amend Sections 1812.203 and 1812.206 of the Civil Code, relating to business regulation.

[Approved by Governor September 18, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 1812.203 of the Civil Code is amended to read:

1812.203. (a) The seller of any seller assisted marketing plan shall pay an annual fee in the amount of one hundred dollars ($100) and annually file with the Attorney General a copy of the disclosure statements required under Sections 1812.205 and 1812.206, as well as a list of the names and resident addresses of those individuals who sell the seller assisted marketing plan on behalf of the seller. The first filing shall be made at least 30 days prior to placing any advertisement or making any other representations to prospective purchasers. The first filing shall not be deemed to be effective until a notice of filing has been issued by the Attorney General. The seller may not make any advertisement or other representation to prospective purchasers until a notice of filing has been issued by the Attorney General. The disclosure statements on file shall be updated through a new filing and payment of a fee in the amount of thirty dollars ($30), whenever material changes occur during the year following the annual filing and the updated filing shall include all disclosure statements required by Sections 1812.205 and 1812.206 and a list of the names and resident addresses of all current salespersons and all salespersons who have acted on behalf of the seller since the previous filing, whether the annual filing or an updated filing, indicating which salespersons are still active and which no longer act on behalf of the seller. Each seller of a seller assisted marketing plan shall file the annual renewal filing, whether or not any update filings have been made, at least 10 days before one year has elapsed from the date of the notice of filing issued by the Attorney General, and at least 10 days before the same date every year thereafter. The annual renewal filing shall include all disclosure statements required by Sections 1812.205 and 1812.206 and a list of the names and addresses of the residences of all current salespersons and all salespersons who have acted on behalf of the seller since the previous filing (whether the annual filing or an updated filing), indicating which salespersons are still active and which no longer act on behalf of the seller. The annual renewal filing fee shall be one hundred dollars ($100). If an annual renewal filing is not filed as required, the previous filing shall be deemed to have lapsed and the seller shall be prohibited from placing any seller assisted marketing plan advertisements or making any other

representations to prospective purchasers of seller assisted marketing plan until a new annual filing is made and a new notice of filing has been issued by the Attorney General.

(b) The Attorney General may send by certified mail to the address set forth in the seller assisted marketing plan filing an intent to issue a stop order denying the effectiveness of or suspending or revoking the effectiveness of any filing if he or she finds the following:

(1) That there has been a failure to comply with any of the provisions of this title.

(2) That the offer or sale of the seller assisted marketing plan would constitute a misrepresentation to, or deceit of, or fraud on, the purchaser.

(3) That any person identified in the filing has been convicted of an offense under paragraph (1) of subdivision (b) of Section 1812.206, or is subject to an order or has had a civil judgment entered against him or her as described in paragraphs (2) and (3) of subdivision (b) of Section 1812.206, and the involvement of that person in the sale or management of the seller assisted marketing plan creates an unreasonable risk to prospective purchasers.

(c) The notice referred to shall include facts supporting a suspension or revocation. If the seller assisted marketing plan does not submit to the Attorney General, under penalties of perjury signed by an owner or officer of the seller assisted marketing plan, within 10 days of receipt of the intent to issue a stop order, a refutation of each and every supporting fact set forth in the notice, and each fact not refuted shall be deemed, for purposes of issuance of the order, an admission that the fact is true. If, in the opinion of the Attorney General, and based upon supporting facts not refuted by the seller assisted marketing plan, the plan is offered to the public without compliance with this title, the Attorney General may order the seller to desist and refrain from the further sale or attempted sale of the seller assisted marketing plan unless and until a notice of filing has been issued pursuant to this section. Until that time, the registration shall be void. The order shall be in effect until and unless the seller assisted marketing plan files a proceeding in superior court pursuant to Section 1085 or 1094.5 of the Code of Civil Procedure or seeks other judicial relief and serves a copy of the proceeding upon the Attorney General.

SEC. 2. Section 1812.206 of the Civil Code is amended to read:

1812.206. At least 48 hours prior to the execution of a seller assisted marketing plan contract or agreement or at least 48 hours prior to the receipt of any consideration, whichever occurs first, the seller or his or her representative shall provide to the prospective purchaser in writing a document entitled "SELLER ASSISTED MARKETING PLAN INFORMATION SHEET." The seller may combine the information required under this section with the information required under Section 1812.205 and, if done, shall utilize the single title "DISCLOSURES REQUIRED BY CALIFORNIA

LAW," and the title page required by Section 1812.205. If a combined document is used, it shall be given at the time required by Section 1812.205, provided that this time meets the 48-hour test of this section. The information sheet required by this section shall contain the following:

(a) The name of and the office held by the seller's owners, officers, directors, trustees and general or limited partners, as the case may be, and the names of those individuals who have management responsibilities in connection with the seller's business activities.

(b) A statement whether the seller, any person identified in subdivision (a), and any other company managed by a person identified in subdivision (a):

(1) Has been convicted of a felony or misdemeanor or pleaded nolo contendere to a felony or misdemeanor charge if the felony or misdemeanor involved an alleged violation of this title, fraud, embezzlement, fraudulent conversion or misappropriation of property.

(2) Has been held liable in a civil action by final judgment or consented to the entry of a stipulated judgment if the civil action alleged a violation of this title, fraud, embezzlement, fraudulent conversion or misappropriation of property or the use of untrue or misleading representations in an attempt to sell or dispose of real or personal property or the use of unfair, unlawful or deceptive business practices.

(3) Is subject to any currently effective agreement, injunction, or restrictive order, including, but not limited to, a "cease and desist" order, an "assurance of discontinuance," or other comparable agreement or order, relating to business activity as the result of an action or investigation brought by a public agency or department, including, but not limited to, an action affecting any vocational license.

The statements required by paragraphs (1), (2) and (3) of this subdivision shall set forth the terms of the agreement, or the court, the docket number of the matter, the date of the conviction or of the judgment and, when involved, the name of the governmental agency that initiated the investigation or brought the action resulting in the conviction or judgment.

(4) Has at any time during the previous seven fiscal years filed in bankruptcy, been adjudged a bankrupt, been reorganized due to insolvency, or been a principal, director, officer, trustee, general or limited partner, or had management responsibilities of any other person, as defined in subdivision (b) of Section 1812.201, that has so filed or was so adjudicated or reorganized, during or within one year after the period that the individual held that position. If so, the name and location of the person having so filed, or having been so adjudged or reorganized, the date thereof, the court which exercised jurisdiction, and the docket number of the matter shall be set forth.

(c) The length of time the seller:

(1) Has sold seller assisted marketing plans.

(2) Has sold the specific seller assisted marketing plan being offered to the purchaser.

(d) If the seller is required to secure a bond or establish a trust account pursuant to the requirements of Section 1812.204, the information sheet shall state either:

(1) "Seller has secured a bond issued by

_____,

(name and address of surety company)

a surety company admitted to do business in this state. Before signing a contract to purchase this seller assisted marketing plan, you should check with the surety company to determine the bond's current status," or

(2) "Seller has deposited with the office of the Attorney General information regarding its trust account. Before signing a contract to purchase this seller assisted marketing plan, you should check with the Attorney General to determine the current status of the trust account."

(e) A copy of a recent, not more than 12 months old, financial statement of the seller, together with a statement of any material changes in the financial condition of the seller from the date thereof. That financial statement shall either be audited or be under penalty of perjury signed by one of the seller's officers, directors, trustees or general or limited partners. The declaration under penalty of perjury shall indicate that to the best of the signatory's knowledge and belief the information in the financial statement is true and accurate; the date of signature and the location where signed shall also be indicated. Provided, however, that where a seller is a subsidiary of another corporation which is permitted by generally accepted accounting standards to prepare financial statements on a consolidated basis, the above information may be submitted in the same manner for the parent if the corresponding financial statement of the seller is also provided and the parent absolutely and irrevocably has agreed to guarantee all obligations of the seller.

(f) An unexecuted copy of the entire seller assisted marketing plan contract.

(g) For purposes of this section, "seller's owners" means any individual who holds an equity interest of at least 10 percent in the seller.

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 596

An act to amend Sections 14524, 14525, and 65086.5 of the Government Code, and to amend Sections 163, 164, 182.7, 188.8, and 188.10 of, and to repeal Section 164.1 of, the Streets and Highways Code, relating to transportation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 18, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. 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. Federal funds available for demonstration projects that are not subject to federal obligational authority, or are accompanied with their own dedicated obligational authority, shall not be considered funds that would otherwise be available to the state and shall not be included in the fund estimate.

(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. 2. 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. Federal funds available for demonstration projects that are not subject to federal obligational authority, or are accompanied with their own dedicated obligational authority, shall not be considered funds that would otherwise be available to the state and shall not be included in the fund estimate.

(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. 3. Section 65086.5 of the Government Code is amended to read:

65086.5. (a) To the extent that the work does not jeopardize the delivery of the projects in the adopted state transportation improvement program, the Department of Transportation may prepare a project studies report for capacity-increasing state highway projects that are not included in the state transportation improvement program. Preparation of the project studies report shall be limited by the resources available to the department for that work, supplemented, as appropriate, by regional or local resources. The project studies report shall include the project-related factors of limits, description, scope, costs, and the amount of time needed for initiating construction.

(b) Whenever project studies reports are performed by an entity other than the Department of Transportation, the department shall review and approve the report.

(c) The Department of Transportation may be requested to prepare a project studies report for a capacity-increasing state highway project which is being proposed for inclusion in a future state transportation improvement program. The department shall have 30 days to determine whether it can complete the requested report in a timely fashion. If the department determines that it cannot complete the report in a timely fashion, the requesting entity may prepare the report. Upon submission of a project studies report to the department by the entity, the department shall complete its review and provide its comments to that entity within 60 days from the date of submission. The department shall complete its review and final determination of a report which has been revised to address the department's comments within 30 days following submission of the revised report.

(d) The Department of Transportation, in consultation with representatives of cities, counties, and regional transportation planning agencies, shall prepare draft guidelines for the preparation of project studies reports by all entities. The guidelines shall address the development of reliable cost estimates. The department shall submit the draft guidelines to the California Transportation Commission not later than July 1, 1991. The commission shall adopt the final guidelines not later than October 1, 1991. Guidelines adopted by the commission shall apply only to project studies reports commenced after October 1, 1991.

SEC. 4. Section 163 of the Streets and Highways Code is amended 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. For the purposes of this section, "federal funds" means any obligational authority to be provided under annual federal transportation appropriations acts. 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, 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. 5. Section 164 of the Streets and Highways Code is amended 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, safety, and providing funds to match federal funds.

SEC. 6. Section 164.1 of the Streets and Highways Code is repealed.

SEC. 7. Section 182.7 of the Streets and Highways Code is amended to read:

182.7. (a) Notwithstanding Sections 182 and 182.5, Sections 188, 188.8, and 825 do not apply to the expenditure of federal funds apportioned to the state pursuant to subsection (b)(2) of Section 104 of Title 23 of the United States Code. These funds shall be known as the congestion mitigation and air quality program funds and shall be expended in accordance with Section 19 of Title 3 of the United States Code. The department, the transportation planning agencies, and the metropolitan planning organizations may do all things necessary in their jurisdictions to secure and expend those federal funds in accordance with the intent of federal law and this chapter.

(b) The congestion mitigation and air quality program funds, including any funds to which subsection (c) of Section 110 of Title 23 of the United States Code, as added by subdivision (a) of Section 1310 of Public Law 105-178, applies, shall be apportioned by the department to the metropolitan planning organizations designated pursuant to Section 134 of Title 23 of the United States Code and, in areas where none has been designated, to the transportation planning agency established by Section 29532 of the Government Code. The funds shall be apportioned to metropolitan planning organizations and transportation planning agencies responsible for air quality conformity determinations in federally designated air quality nonattainment and maintenance areas within the state in the manner and in accordance with the formula set forth in subsection (b)(2) of Section 104 of Title 23 of the United States Code.

(c) Notwithstanding subdivision (b), where county transportation commissions have been created by Division 12 (commencing with Section 130000) of the Public Utilities Code, all congestion mitigation and air quality program funds shall be further apportioned by the metropolitan planning organization to the county transportation commission on the basis of relative population within the federally designated air quality nonattainment and maintenance areas after first apportioning to the nonattainment and maintenance areas in the manner and in accordance with the formula set forth in subsection (b)(2) of Section 104 of Title 23 of the United States Code.

In the Monterey Bay region, all congestion mitigation and air quality improvement program funds shall be further apportioned, on the basis of relative population, by the metropolitan planning organization to the regional transportation planning agencies designated under subdivision (b) of Section 29532 of the Government Code.

(d) The department shall notify each metropolitan planning organization, transportation planning agency, and county transportation commission receiving an apportionment under this section, as soon as possible each year, of the amount of obligational authority estimated to be available for expenditure from the federal apportionment. The metropolitan planning organizations, transportation planning agencies, and county transportation commissions, in cooperation with the department, congestion

management agencies, cities and counties, and affected transit operators, shall select and program projects in conformance with federal law. Each metropolitan planning organization and transportation planning agency shall, not later than August 1 of each even-numbered year beginning in 1994, submit its transportation improvement program prepared pursuant to Section 134 of Title 23 of the United States Code to the department for incorporation into the state transportation improvement program.

(e) Not later than July 1 of each year, the metropolitan planning organizations and the transportation planning agencies receiving obligational authority under this section, shall notify the department if they will not use all of the available obligational authority, and the amount of obligational authority that will not be used. Unused obligational authority shall be made available for use by the department. If the department does not have sufficient federal apportionments to fully use excess obligational authority, the metropolitan planning organization or transportation planning agency relinquishing obligational authority shall make sufficient apportionments available to the department to fund alternate projects, when practical, within the geographical areas relinquishing the obligational authority. Notwithstanding this subdivision, the department shall comply with subsection (f) of Section 133 of Title 23 of the United States Code.

SEC. 8. 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, except for supplemental project allocations made by the commission.

(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 obligational authority otherwise available for other projects shall be subtracted from the county share of the county where the project is located.

SEC. 9. Section 188.10 of the Streets and Highways Code, as added by Section 62 of Chapter 622 of the Statutes of 1997, is amended 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 (j) 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. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the 1998 State Transportation Improvement Program may be implemented as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 597

An act to amend Sections 11005.3 and 14669 of, and to add Section 14667.1 to, the Government Code, relating to property.

[Approved by Governor September 18, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 11005.3 of the Government Code is amended to read:

11005.3. Any state department, board, or commission may lease any real property for the use of the state agency for storage, warehouse, or office purposes provided that the lease term does not exceed three years and the annual rental does not exceed fifty thousand dollars ($50,000).

Prior approval to engage in any lease activity shall first be obtained from the Department of General Services and the lease agreement shall be subject to approval by the department.

SEC. 2. Section 14667.1 is added to the Government Code, to read:

14667.1. Notwithstanding Section 14616, the director may exempt from his or her approval, or from the approval of the department, any state real estate acquisition or conveyance involving not more than one hundred fifty thousand dollars ($150,000) for which approval is required by statute whenever, in his or her judgment, the state agency delegated that authority has the necessary real estate expertise and experience to complete the transaction competently and professionally while protecting the best interests of the state. Written notice of exemptions shall be given to the Controller.

SEC. 3. Section 14669 of the Government Code is amended to read:

14669. (a) The director may hire, lease, lease-purchase, or lease with the option to purchase any real or personal property for the use of any state agency, including the Department of General Services, if he or she deems the hiring or leasing is in the best interests of the state.

(b) The director shall not enter into a lease-purchase agreement that involves office space, unless specifically authorized to do so by the Legislature. The director shall solicit written bids for any lease-purchase that involves office space in a newspaper of general circulation in the county in which the project is located. All bids

received shall be publicly opened and the lease awarded to the lowest responsible bidder. If the director deems the acceptance of the lowest responsible bid is not in the best interest of the state, he or she may reject all bids.

(c) Notwithstanding Section 7550.5, by March 1st of each year, the director shall prepare a report listing all leases entered into in the prior calendar year with an option to purchase with another entity, public or private, that involve office space. The report shall be submitted to the Chairperson of the Joint Legislative Budget Committee and the chairperson of the committee of each house of the Legislature that considers appropriations.

CHAPTER 598

An act to amend Section 11200.1 of the Government Code, relating to insurance.

[Approved by Governor September 18, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 11200.1 of the Government Code is amended to read:

11200.1. The Governor, upon nomination by the Insurance Commissioner, shall appoint the nominees as one chief deputy, and as one deputy director of the Department of Insurance to serve at the pleasure of the Insurance Commissioner. Absent an affirmative appointment by the Governor, the nominee or nominees submitted by the Insurance Commissioner shall be deemed appointed by the Governor 30 days following their nomination by the commissioner.

CHAPTER 599

An act to amend Sections 7027.1, 17500, 17502, 17509, 17510.4, 17510.85, 17530, 17531, 17531.5, 17533, 17533.8, 17533.9, 17533.10, 17537.5, 17539.5, and 17539.55 of the Business and Professions Code, relating to electronic commerce.

[Approved by Governor September 18, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. The Legislature finds and declares that the Internet is a collection of interconnected computers and communications networks that is used for commercial, educational, and recreational purposes. Use of the Internet is growing rapidly, doubling every four months according to some estimates. The number of persons using the Internet has doubled every year for the past several years.

SEC. 2. Section 7027.1 of the Business and Professions Code is amended to read:

7027.1. (a) It is a misdemeanor for any person to advertise for construction or work of improvement covered by this chapter unless that person holds a valid license under this chapter in the classification so advertised, except that a licensed building or engineering contractor may advertise as a general contractor.

(b) "Advertise," as used in this section, includes, but not by way of limitation, the issuance of any card, sign, or device to any person, the causing, permitting, or allowing of any sign or marking on or in any building or structure, or in any newspaper, magazine, or by airwave or any electronic transmission, or in any directory under a listing for construction or work of improvement covered by this chapter, with or without any limiting qualifications.

(c) A violation of this section is punishable by a fine of not less than seven hundred dollars ($700) and not more than one thousand dollars ($1,000), which fine shall be in addition to any other punishment imposed for a violation of this section.

(d) If upon investigation, the registrar has probable cause to believe that an unlicensed individual is in violation of this section, the registrar may issue a citation pursuant to Section 7028.7 or 7099.10.

SEC. 2.5. Section 17500 of the Business and Professions Code is amended to read:

17500. It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement, concerning that real or personal property or those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any person, firm, or corporation to so make or

disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell that personal property or those services, professional or otherwise, so advertised at the price stated therein, or as so advertised. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both that imprisonment and fine.

SEC. 3. Section 17502 of the Business and Professions Code is amended to read:

17502. This article does not apply to any visual or sound radio broadcasting station, to any internet service provider or commercial online service, or to any publisher of a newspaper, magazine, or other publication, who broadcasts or publishes, including over the Internet, an advertisement in good faith, without knowledge of its false, deceptive, or misleading character.

SEC. 4. Section 17509 of the Business and Professions Code is amended to read:

17509. (a) Any advertisement, including any advertisement over the Internet, soliciting the purchase or lease of a product or service, or any combination thereof, that requires, as a condition of sale, the purchase or lease of a different product or service, or any combination thereof, shall conspicuously disclose in the advertisement the price of all those products or services. This requirement shall not in any way affect the provisions of Sections 16726 and 16727, with respect to unlawful buying arrangements.

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

(1) Contractual plans or arrangements complying with this paragraph under which the seller periodically provides the consumer with a form or announcement card which the consumer may use to instruct the seller not to ship the offered merchandise. Any instructions not to ship merchandise included on the form or card shall be printed in type as large as all other instructions and terms stated on the form or card. The form or card shall specify a date by which it shall be mailed by the consumer (the "mailing date") or received by the seller (the "return date") to prevent shipment of the offered merchandise. The seller shall mail the form or card either at least 25 days prior to the return date or at least 20 days prior to the mailing date, or provide a mailing date of at least 10 days after receipt by the consumer, except that whichever system the seller chooses for mailing the form or card, shall be calculated to afford the consumer at least 10 days in which to mail his or her form or card. The form or card shall be preaddressed to the seller so that it may serve as a postal reply card or, alternatively, the form or card shall be accompanied by a return envelope addressed to seller. Upon the membership contract or application form or on the same page and immediately adjacent to the contract or form, and in clear and conspicuous

language, there shall be disclosed the material terms of the plan or arrangement including all of the following:

(A) That aspect of the plan under which the subscriber shall notify the seller, in the manner provided for by the seller, if the seller does not wish to purchase or receive the selection.

(B) Any obligation assumed by the subscriber to purchase a minimum quantity of merchandise.

(C) The right of a contract-complete subscriber to cancel his or her membership at any time.

(D) Whether billing charges will include an amount for postage and handling.

(2) Other contractual plans or arrangements not covered under subdivision (a), such as continuity plans, subscription arrangements, standing order arrangements, supplements, and series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive that merchandise on a periodic basis.

(c) This section shall not apply to the publisher of any newspaper, periodical, or other publication, or any radio or television broadcaster, or the owner or operator of any cable, satellite, or other medium of communication who broadcasts or publishes, including over the Internet, an advertisement or offer in good faith, without knowledge of its violation of subdivision (a).

SEC. 5. Section 17510.4 of the Business and Professions Code is amended to read:

17510.4. If the initial solicitation or sales solicitation is made by radio, television, letter, telephone, or any other means not involving direct personal contact with the person solicited, including over the Internet, this solicitation shall clearly disclose the information required by Section 17510.3. This disclosure requirement shall not apply to any radio or television solicitation of 60 seconds or less. If the gift is subsequently made or the sale is subsequently consummated, the solicitation or sale for charitable purposes card shall be mailed to or otherwise delivered to the donor, or to the buyer with the item or items purchased.

SEC. 6. Section 17510.85 of the Business and Professions Code is amended to read:

17510.85. Any individual, corporation, or other legal entity who for compensation solicits funds or other property in this state for charitable purposes shall disclose prior to an oral solicitation or sales solicitation made by direct personal contact, radio, television, telephone, or over the Internet, or at the same time as a written solicitation or sales solicitation: (a) that the solicitation or sales solicitation is being conducted by a commercial fundraiser for charitable purposes, and (b) the name of the commercial fundraiser for charitable purposes as registered with the Attorney General pursuant to Section 12599 of the Government Code.

SEC. 7. Section 17530 of the Business and Professions Code is amended to read:

17530. It is unlawful for any person, firm, corporation, or association, or any employee or agent therefor, to make or disseminate any statement or assertion of fact in a newspaper, circular, circular or form letter, or other publication published or circulated, including over the Internet, in any language in this state, concerning the extent, location, ownership, title, or other characteristic, quality, or attribute of any real estate located in this state or elsewhere, which is known to be untrue and which is made or disseminated with the intention of misleading.

Nothing in this section shall be construed to hold the publisher of any newspaper, or any job printer, liable for any publication herein referred to unless the publisher or printer has an interest, either as owner or agent, in the real estate so advertised.

SEC. 8. Section 17531 of the Business and Professions Code is amended to read:

17531. It is unlawful for any person, firm, or corporation, in any newspaper, magazine, circular, form letter or any open publication, published, distributed, or circulated in this state, including over the Internet, or on any billboard, card, label, or other advertising medium, or by means of any other advertising device, to advertise, call attention to or give publicity to the sale of any merchandise, which merchandise is secondhand or used merchandise, or which merchandise is defective in any manner, or which merchandise consists of articles or units or parts known as "seconds," or blemished merchandise, or which merchandise has been rejected by the manufacturer thereof as not first class, unless there is conspicuously displayed directly in connection with the name and description of that merchandise and each specified article, unit, or part thereof, a direct and unequivocal statement, phrase, or word which will clearly indicate that the merchandise or each article, unit, or part thereof so advertised is secondhand, used, defective, or consists of "seconds" or is blemished merchandise, or has been rejected by the manufacturer thereof, as the case may be. Any violation of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both that imprisonment and fine.

SEC. 9. Section 17531.5 of the Business and Professions Code is amended to read:

17531.5. It is unlawful for any person, firm, or corporation, in any newspaper, magazine, circular, form letter, or any open publication, published, distributed, or circulated in the State of California, including over the Internet, or on any billboard, card, label, or other advertising medium, or by means of any other advertising device, to advertise, call attention to, or give publicity to the sale of any merchandise, which merchandise is surplus materials as defined in the federal Surplus Property Act of 1944 (50 U.S.C. App. Sec. 1622 et

seq.), unless there is conspicuously displayed directly in connection with the name and description of that merchandise and each specified article, unit, or part thereof, a direct and unequivocal statement, phrase, or word which will clearly indicate that the merchandise or each article, unit, or part thereof so advertised is or consists of surplus materials as defined in the federal Surplus Property Act of 1944.

SEC. 10. Section 17533 of the Business and Professions Code is amended to read:

17533. It is unlawful for any proprietor or publisher of any newspaper or periodical, including any newspaper or periodical published over the Internet, willfully and knowingly to misrepresent the circulation of the newspaper or periodical, for the purpose of securing advertising or other patronage.

SEC. 11. Section 17533.8 of the Business and Professions Code is amended to read:

17533.8. (a) It is unlawful for any person to offer, by mail, by telephone, in person, or by any other means or in any other form, including over the Internet, a prize or gift, with the intent to offer a sales presentation, without disclosing at the time of the offer of the prize or gift, in a clear and unequivocal manner, the intent to offer that sales presentation.

(b) This section shall not apply to the publisher of any newspaper, periodical, or other publication, or any radio or television broadcaster, or the owner or operator of any cable, satellite, or other medium of communications who broadcasts or publishes, including over the Internet, an advertisement or offer in good faith, without knowledge of its violation of subdivision (a).

SEC. 12. Section 17533.9 of the Business and Professions Code is amended to read:

17533.9. It shall be unlawful for any person, firm, corporation, or association, in any newspaper, magazine, circular, form letter, or open publication, published, distributed, or circulated in this state, including over the Internet, or on any billboard, card, label, or other advertising medium, or by means of any other advertising device, to advertise the sale of tear gas, tear gas devices, and tear gas weapons, as defined in Sections 12401 and 12402 of the Penal Code, unless there is conspicuously displayed or stated in connection with the name and description of that tear gas, or those tear gas weapons or devices, a direct and unequivocal statement that will clearly indicate that possession or transportation of tear gas and tear gas weapons or devices is prohibited by law unless specifically exempted or permitted pursuant to the authority contained in Chapter 4 (commencing with Section 12401) of Title 2 of Part 4 of the Penal Code.

SEC. 13. Section 17533.10 of the Business and Professions Code is amended to read:

17533.10. It shall be unlawful for any person, firm, corporation, or association, in any newspaper, magazine, circular, form letter, or open publication, published, distributed, or circulated in this state, including over the Internet, or on any billboard, card, label, or other advertising medium, or by means of any other advertising device, to advertise the sale of anabolic steroids, as defined in subdivision (f) of Section 11056 of the Health and Safety Code, unless there is conspicuously displayed or stated in connection with the name and description of any of those anabolic steroids, a direct and unequivocal statement that will clearly indicate that the possession by, or sale to, an ultimate consumer of anabolic steroids is a crime punishable by a substantial fine and imprisonment, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, pursuant to Sections 11377, 11378, and 11379 of the Health and Safety Code.

SEC. 14. Section 17537.5 of the Business and Professions Code is amended to read:

17537.5. (a) It is unlawful for any person soliciting a sale or order for energy conservation products or services, including over the Internet, to do any of the following:

(1) Make false claims of affiliation or association with an electrical or gas corporation or municipally owned and operated electrical or gas utility or its energy conservation programs.

(2) Falsely represent that the purchase of an energy conservation service or the purchase or installation of an energy conservation product is required by law.

(3) Misrepresent the nature of the purchaser's obligation for the purchase price of the energy conservation products or services.

(4) Misrepresent the tax consequences of purchasing energy conservation products or services.

(b) Any person, firm, corporation, partnership or association, and any employee or agent thereof who violates this section (1) in the course of solicitation of a sale or order at a residence; (2) by telephone; or (3) by any other method or at any other location, including over the Internet, shall be liable for the damages provided by subdivision (c) of Section 17500.3, in addition to all other penalties provided by law.

SEC. 15. Section 17539.5 of the Business and Professions Code is amended to read:

17539.5. (a) For purposes of this section and Sections 17539.55 and 17539.6:

(1) "Broadcast" means the utilization of radio, television, home videos, movie screens, telephones, or other medium, including the Internet, that does not automatically provide the prospective consumer with a printed or written document he or she can read at leisure.

(2) "Caller" means a telephone user or end user who calls or may call an information-access service or who receives a telephonic

solicitation that results in the recipient being connected to an information-access service.

(3) "Carrier" means any regional telephone operating company, interexchange carrier, or local exchange telephone company that provides telecommunications transmission services.

(4) "Incentive" means any item or service of value, however denominated, including, but not limited to, any prize, award, gift, or money, or any coupon that can be used in whole or in part to obtain a product or service.

(5) "Information provider" means a person who advertises or sells an information-access service and on whose behalf charges are billed.

(6) "Information-access service" means any telecommunications service that permits individuals to access a telephone number, and for which the caller is assessed, by virtue of placing or completing the call, a charge that is greater than, or in addition to, the charge for the transmission of the call. Information-access service includes, but is not limited to, telephone numbers with the prefix 900 or 976.

(7) "900 number" means any prefixed telephone number used for information-access service and includes, but is not limited to, telephone numbers with the prefix 900 or 976.

(8) "Prize" means any item of value given to winners in a sweepstakes who have been selected on the basis of lot or chance.

(9) "Program" means the audio message that the caller hears or receives upon placing or receiving a call and being connected to an information-access service.

(10) "Sell an information service" means to attempt to cause a caller to act in a manner that causes that caller to be charged for utilizing an information-access service.

(11) "Solicitation" includes all forms of solicitation for information-access services, including, but not limited to, mailings, advertisements in newspapers and magazines, advertisements broadcast by radio or television, advertisements contained in home videos or appearing on movie screens, telephone solicitations, and advertisements transmitted over the Internet. "Solicitation" does not include simple listings in telephone directories provided those listings are not accompanied by any advertising text.

(12) "Sweepstakes" means any procedure for the distribution of anything of value by lot or by chance that is not unlawful under other provisions of law including, but not limited to, the provisions of Section 320 of the Penal Code. Nothing contained in this section shall be deemed to render lawful any activity that otherwise would violate Section 320 of the Penal Code.

(b) It is unlawful for any person to engage in any of the following acts in order to encourage any caller to utilize an information-access service:

(1) Soliciting callers by use of an automatic dialing device or a live or recorded outbound telephone message.

(2) Utilizing signals or tones provided directly or indirectly by the information provider to access the information-access service.

(3) Requiring callers to call more than one 900 number or to require calling the same 900 number more than one time in order to receive goods or services represented in the initial solicitation.

(4) Utilizing a telephone number other than a 900 number from which a caller can be automatically connected to the information-access service.

(5) Soliciting callers to call a telephone number other than a 900 number, including, but not limited to, an 800 telephone number, when the caller who calls that other number will be referred to a 900 number unless all solicitations for the initial information-access program clearly and conspicuously disclose that a referral will be made and the cost to the caller for calling the 900 number to which the caller will be referred.

(6) Soliciting callers to call a number other than a 900 number, including, but not limited to, an 800 telephone number, when the caller who calls that number will be asked to accept one or more collect calls unless all solicitations clearly and conspicuously disclose that the caller will be asked to accept one or more collect calls and the cost to the caller for accepting the collect calls. The cost shall be described as cost per minute and cost per hour.

(7) Referring a caller from one 900 number to another 900 number unless all solicitations for the initial information-access program clearly and conspicuously disclose that a referral will be made and the cost to the caller for calling the 900 number to which the caller will be referred.

(8) Advertising that the information-access service is free.

(9) Using any printing style, graphic, layout, text, color, or format which states or implies that the solicitation originates from, or was issued by or on behalf of a governmental agency, a public utility, a nonprofit organization, an insurance company, a credit reporting agency, a collection company, or a law firm unless the same is true.

(c) It is unlawful for any person to solicit or sell an information-access service unless the following information is clearly and conspicuously disclosed in all solicitations:

(1) An accurate description of the information-access service.

(2) The name, address, and non-900 telephone number of the information provider.

(3) The cost of the call, which shall be disclosed as follows:

(A) If the call is billed at a fixed rate, the total cost of the call.

(B) If the call is billed on a usage-sensitive basis, the cost per minute or other unit of time, and including:

(i) In broadcast solicitations, the average cost of the call.

(ii) In print solicitations, the average cost or length of the call, except that print solicitations directed to persons in this state shall disclose the average cost of the call.

(C) Solicitations in which the length of the program cannot reasonably be determined because the length of the program depends upon the skill of, or the selections or responses made by, the caller, shall be exempt from the cost disclosure provisions of this paragraph.

(D) Solicitations that are oral shall include a voice announcement of the cost of the call in clear and understandable language that is clearly audible and articulated at a volume equal to that used to announce the 900 number. The cost of the call shall be stated immediately prior to or immediately after the 900 number is stated.

(E) Solicitations that are broadcast visually shall include, in clear, visible, easily readable, and conspicuously presented letters and numbers, set against a contrasting background, the cost of calling the 900 number. The visual disclosure of the cost of the call shall be displayed directly above, below, or adjacent to the number to be called whenever the number is displayed in the commercial. The visual disclosure of the cost of the call shall be a distinct disclosure and shall not be combined in the same paragraph with any other disclosure required to be made pursuant to this section. The lettering of the visual disclosure shall be no less than 18 scan lines high and shall be displayed for as long as the number is displayed. Broadcast solicitations shall also include a voice announcement of the cost of the call in clear and understandable language that is clearly audible and articulated at a volume equal to that used to announce the 900 number. The cost of the call shall be stated immediately prior to or after the 900 number is stated.

(F) Solicitations that appear in print shall include, in clear, visible, easily readable, and conspicuously presented letters and numbers, the cost of calling the 900 number. The printed disclosure of the cost of the call shall be displayed directly above, below, or adjacent to the number. The lettering of the cost disclosure shall be in no less than 10-point type.

(4) If the information-access service is aimed at or likely to be of interest to minors, solicitations that appear in print shall contain a statement, in at least the same size print as that used to disclose the 900 number, that persons under the age of 18 years should obtain parental consent before calling. If the solicitation is through a broadcast, this statement shall be of the same audibility as that used to disclose the 900 number.

(d) It shall be unlawful for any person to solicit or sell an information-access service that offers the person being solicited the opportunity to participate in a sweepstakes unless:

(1) There is available, to all persons who are solicited, a free alternative method of participating that provides all participants with an equal chance of winning. No information-access service shall offer a sweepstakes to consumers in this state in which a person calling a 900 number will receive any benefit beyond that received by a person who utilizes an alternative method of entry into the

sweepstakes. The free alternative method of entry shall be clearly and conspicuously disclosed in the following manner:

(A) Solicitations that are broadcast visually shall include a visual disclosure of the alternate method of entry. The disclosure that one can enter without calling the 900 number and instructions on how one may so enter shall be displayed in close proximity to the 900 number on a static screen against a clean and contrasting background. The lettering of the visual disclosure shall be made in clear, visible, easily readable, and understandable text, shall be no less than 18 scan lines, and shall be displayed for a period of time sufficient to allow a consumer to copy the information. The visual disclosure of the alternate method of entry shall be distinct and shall not be combined in the same paragraph with any other disclosure required to be made pursuant to this section. Solicitations that are broadcast orally shall include an oral disclosure of the alternate method of entry. The disclosure that one can enter for free and how one may so enter shall be made in clear and understandable language that is clearly audible and articulated at a volume equal to that used to announce the 900 number and for a period of time sufficient to allow a consumer to copy the information. The oral disclosure shall be made in close proximity to the 900 number. All broadcast solicitations shall include, in addition to the oral or visual disclosure described above, an oral statement that no telephone call is required to enter the sweepstakes.

(B) For print solicitations, the disclosure of the existence of the alternate method of entry and detailed instructions on how one may so enter shall be made in clear, visible, and easily readable text in close proximity to the 900 number to be called. The lettering of the disclosure shall be of a size no less than the predominant type size used in the main text of the solicitation and shall not be obscured by any other printed or graphic matter in the solicitation.

(2) If the alternate method of entry is by mail, any associated fulfillment that the solicitation represents will be sent to persons who respond by mail shall be completed within 21 days, and the solicitation may not represent that the time for fulfillment of mail-in requests is any longer than the information provider reasonably anticipates it will take to fulfill, which shall, in no event, exceed 21 days.

(3) If the alternate method of entry is by mail, and entrants in this state are required to submit a self-addressed envelope to receive any associated fulfillment that the solicitation represents will be sent to persons who respond by mail, entrants shall not be required to affix return postage to their self-addressed envelope.

(4) Minors are excluded from participation.

(5) The information provider provides a full refund to any caller who requests one upon submission by the caller of proof of payment of the telephone charges, provided that if the caller has not

previously requested a refund for the same information-access service call, no proof of payment is required.

(6) The amount or value of each prize awarded is not dependent on the number of entries received.

(7) The information provider obtains unrestricted title or the right to vest title in all prizes prior to the commencement of the sweepstakes.

(8) A list of the winners of all major prizes is made available to any person requesting that list and the solicitation contains an address where a person may request a list of the winners. The names and addresses of the winners shall be available to the Attorney General upon request within 30 days after the selection of winners and shall be maintained for a period of not less than three years.

(9) All major prizes shall be awarded. Major prizes that are not claimed by those who have been solicited shall be awarded in a subsequent drawing from the names of all who responded to the solicitation but did not receive a major prize. This drawing shall take place not later than 30 days after the deadline for responding to the solicitation. For purposes of this section, a major prize is a prize with a substantial cash value.

(10) A deadline by which the recipient of the solicitation must respond is clearly and conspicuously disclosed.

(11) The disclosed deadline provides those solicited with at least two weeks within which to respond.

(12) The solicitation discloses any material restrictions or conditions that must be satisfied before the recipient is entitled to receive any prize offered.

(13) The solicitation contains a description of how the winner of each prize mentioned is selected.

(e) Solicitations made to persons in this state offering the opportunity to participate in a sweepstakes shall, with respect to each prize offered, set forth clearly, conspicuously, and in easily readable letters the odds of receiving that prize, described in whole Arabic numerals in a format such as: "1 chance in 100,000" or "1:100,000." If the odds depend upon the number of entries and the number of persons solicited is controlled by the sponsor of the promotion, the solicitation shall set forth the reasonable expectation of entries. If the odds depend upon the number of entries received and the number of persons solicited is not controlled by the sponsor of the sweepstakes, a statement to the effect that the odds depend on the number of entries received shall be sufficient. If more than one prize is offered, the odds shall be separately stated for each prize. The disclosure required to be made pursuant to this subdivision shall be made immediately adjacent to the first identification of the prize to which it relates or in a separate section entitled "Consumer Disclosure" or "Official Rules." These titles shall be printed in no less than 10-point boldface type. The consumer disclosure section shall be clearly and conspicuously disclosed in the solicitation. There shall be

a statement referring the recipient of the solicitation to the consumer disclosure section in the main text of the solicitation in close proximity to the description of the prizes, and the odds shall be disclosed within the top 25 percent of the consumer disclosure section. If the consumer disclosure section does not appear on the same page as the statement referring the recipient of the solicitation to this section, the statement shall indicate where the consumer disclosure section is located. If the odds appear in the section entitled "Consumer Disclosure" or "Official Rules," there shall be a clear and conspicuous statement in the main text of the solicitation in close proximity to the description of the prizes that the odds to the recipient of obtaining the prize or prizes will be found elsewhere, and the statement shall set forth where they will be found. It is not a violation of this section to reference the official rules and the odds in the same statement as long as the statement referencing the official rules and the odds is in the main text of the solicitation in close proximity to the description of the prizes. For example, a statement such as: "See official rules (on (reference to location of rules if not on same page)) for odds and other details" or a similar statement meets the requirements of this provision. This provision shall not apply to broadcast solicitations for sweepstakes in which the winners will be selected in a random drawing in which the odds depend on the number of entries received, provided that those solicitations shall disclose where the official rules are available and the official rules shall set forth the odds of winning in accordance with this subdivision.

(f) If more than one prize is listed in a solicitation for an information-access service that offers the opportunity to participate in a sweepstakes, the prizes shall be listed in descending order of retail value.

(g) If any incentive is offered in a solicitation for an information-access service, the solicitation shall clearly and conspicuously disclose all restrictions, qualifications, and deadlines that must be complied with in order to obtain the incentive being offered.

(h) No person soliciting callers for an information-access service shall represent directly or by implication that the person being solicited is part of a significantly limited group selected to receive an incentive, unless that is true and the number of recipients who will be receiving the solicitation is clearly and conspicuously set forth in the solicitation.

(i) No person soliciting callers for an information-access service shall state or imply that the person being solicited has already been chosen to receive a prize in a sweepstakes, will receive one or more of several listed prizes, or may receive one or more of several listed prizes, unless:

(1) The disclosed deadline in the solicitation is not more than six months after the first solicitation for participation, provided, however, that this subdivision shall not apply to random draw

contests where the solicitation makes it clear that no participant has yet been chosen as the "winner" and the drawing date is clearly and conspicuously disclosed.

(2) No further solicitations for participation in a particular sweepstakes is disseminated after the top prize listed in the solicitation has been claimed. A drawing pursuant to paragraph (9) of subdivision (d) shall thereafter be conducted to award any unclaimed prizes.

(j) It is unlawful for any person to solicit or sell an information-access service to any person in the following manner:

(1) The solicitation offers to persons in this state who respond to the solicitation by calling a 900 number any incentive that:

(A) Requires the recipient to purchase goods or services from the information provider in order to utilize the incentive, provided, however, that this subparagraph does not apply to offers where the incentive is a "cents-off" coupon that is usable only for the purchase of the offeror's own brand name product or products, the total value of the "cents-off" coupon offered is clearly and conspicuously disclosed in the offer, the total value of the "cents-off" coupon does not exceed five dollars ($5), the "cents-off" coupon is to be utilized to reduce the price of those products at retail stores in the recipient's area, and at least 60 percent of the revenue per month of the offeror is derived from the sale of the product or products being purchased without the use of the "cents-off" coupons.

(B) Requires the recipient to purchase goods or services from any third party in order to utilize the incentive unless:

(i) The fact that a purchase or payment is required in order to utilize the incentive is disclosed in the solicitation.

(ii) A representative sample of the establishments at which the incentive may be redeemed is disclosed in the solicitation.

(iii) If the incentive entitles the recipient to save money on the purchase of goods or services, the incentive is described as a cents-off, discount coupon, or similar term that clearly indicates that it is redeemable only for savings on purchases of goods or services.

(2) The solicitation states or implies that the caller is likely to receive one of the prizes offered, by representing in the solicitation that other named persons have already won the other prizes being offered in the solicitation and that the recipient of the solicitation is therefore likely to receive the prize that has not been won by the other persons named in the solicitation, unless the recipient's odds of receiving the remaining prize are clearly and conspicuously disclosed in the solicitation in close proximity to the list of the other named persons.

(k) Nothing contained in this section shall be deemed to render lawful any activity that otherwise would violate Section 17537.

(*l*) No information-access service shall offer a game of skill in which the cost of the call is billed on a usage-sensitive basis and in which answers to multiple choice questions of increasing difficulty

are required in order to win, unless the solicitation clearly and conspicuously discloses the percentage of contestants anticipated to answer all questions correctly based on prior experience or, if the game is being operated for the first time, based on a good faith estimate.

(m) This section does not apply to a regional telephone operating company, interexchange carrier, or local telephone company operating in those capacities, that in good faith telecommunicates an information-access program without knowledge that the program or related advertising violates any provision of this section, Section 17539.55, or Section 17539.6.

(n) Neither this section, Section 17539.55, nor Section 17539.6 applies to the California State Lottery.

SEC. 16. Section 17539.5 of the Business and Professions Code is amended to read:

17539.5. (a) For purposes of this section and Sections 17539.55 and 17539.6:

(1) "Broadcast" means the utilization of radio, television, home videos, movie screens, telephones, or other medium, including the Internet, that does not automatically provide the prospective consumer with a printed or written document he or she can read at leisure.

(2) "Caller" means a telephone user or end user who calls or may call an information-access service or who receives a telephonic solicitation that results in the recipient being connected to an information-access service.

(3) "Carrier" means any regional telephone operating company, interexchange carrier, or local exchange telephone company that provides telecommunications transmission services.

(4) "Incentive" means any item or service of value, however denominated, including, but not limited to, any prize, award, gift, or money, or any coupon that can be used in whole or in part to obtain a product or service.

(5) "Information provider" means a person who advertises or sells an information-access service and on whose behalf charges are billed.

(6) "Information-access service" means any telecommunications service that permits individuals to access a telephone number, and for which the caller is assessed, by virtue of placing or completing the call, a charge that is greater than, or in addition to, the charge for the transmission of the call. Information-access service includes, but is not limited to, telephone numbers with the prefix 900 or 976.

(7) "900 number" means any prefixed telephone number used for information-access service and includes, but is not limited to, telephone numbers with the prefix 900 or 976.

(8) "Prize" means any item of value given to winners in a sweepstakes who have been selected on the basis of lot or chance.

(9) "Program" means the audio message that the caller hears or receives upon placing or receiving a call and being connected to an information-access service.

(10) "Sell an information service" means to attempt to cause a caller to act in a manner that causes that caller to be charged for utilizing an information-access service.

(11) "Solicitation" includes all forms of solicitation for information-access services, including, but not limited to, mailings, advertisements in newspapers and magazines, advertisements broadcast by radio or television, advertisements contained in home videos or appearing on movie screens, telephone solicitations, and advertisements transmitted over the Internet. "Solicitation" does not include simple listings in telephone directories provided those listings are not accompanied by any advertising text.

(12) "Sweepstakes" means any procedure for the distribution of anything of value by lot or by chance that is not unlawful under other provisions of law including, but not limited to, the provisions of Section 320 of the Penal Code. Nothing contained in this section shall be deemed to render lawful any activity that otherwise would violate Section 320 of the Penal Code.

(b) It is unlawful for any person to engage in any of the following acts in order to encourage any caller to utilize an information-access service:

(1) Soliciting callers by use of an automatic dialing device or a live or recorded outbound telephone message.

(2) Utilizing signals or tones provided directly or indirectly by the information provider to access the information-access service.

(3) Requiring callers to call more than one 900 number or to require calling the same 900 number more than one time in order to receive goods or services represented in the initial solicitation.

(4) Utilizing a telephone number other than a 900 number from which a caller can be automatically connected to the information-access service.

(5) Soliciting callers to call a telephone number other than a 900 number, including, but not limited to, an 800 telephone number, when the caller who calls that other number will be referred to a 900 number unless all solicitations for the initial information-access program clearly and conspicuously disclose that a referral will be made and the cost to the caller for calling the 900 number to which the caller will be referred.

(6) Soliciting callers to call a number other than a 900 number, including, but not limited to, an 800 telephone number, when the caller who calls that number will be asked to accept one or more collect calls unless all solicitations clearly and conspicuously disclose that the caller will be asked to accept one or more collect calls and the cost to the caller for accepting the collect calls. The cost shall be described as cost per minute and cost per hour.

(7) Referring a caller from one 900 number to another 900 number unless all solicitations for the initial information-access program clearly and conspicuously disclose that a referral will be made and the cost to the caller for calling the 900 number to which the caller will be referred.

(8) Advertising that the information-access service is free.

(9) Using any printing style, graphic, layout, text, color, or format which states or implies that the solicitation originates from, or was issued by or on behalf of a governmental agency, a public utility, a nonprofit organization, an insurance company, a credit reporting agency, a collection company, or a law firm unless the same is true.

(c) It is unlawful for any person to solicit or sell an information-access service unless the following information is clearly and conspicuously disclosed in all solicitations:

(1) An accurate description of the information-access service.

(2) The name, address, and non-900 telephone number of the information provider.

(3) The cost of the call, which shall be disclosed as follows:

(A) If the call is billed at a fixed rate, the total cost of the call.

(B) If the call is billed on a usage-sensitive basis, the cost per minute or other unit of time, and including:

(i) In broadcast solicitations, the average cost of the call.

(ii) In print solicitations, the average cost or length of the call, except that print solicitations directed to persons in this state shall disclose the average cost of the call.

(C) Solicitations in which the length of the program cannot reasonably be determined because the length of the program depends upon the skill of, or the selections or responses made by, the caller, shall be exempt from the cost disclosure provisions of this paragraph.

(D) Solicitations that are oral shall include a voice announcement of the cost of the call in clear and understandable language that is clearly audible and articulated at a volume equal to that used to announce the 900 number. The cost of the call shall be stated immediately prior to or immediately after the 900 number is stated.

(E) Solicitations that are broadcast visually shall include, in clear, visible, easily readable, and conspicuously presented letters and numbers, set against a contrasting background, the cost of calling the 900 number. The visual disclosure of the cost of the call shall be displayed directly above, below, or adjacent to the number to be called whenever the number is displayed in the commercial. The visual disclosure of the cost of the call shall be a distinct disclosure and shall not be combined in the same paragraph with any other disclosure required to be made pursuant to this section. The lettering of the visual disclosure shall be no less than 18 scan lines high and shall be displayed for as long as the number is displayed. Broadcast solicitations shall also include a voice announcement of the cost of the call in clear and understandable language that is clearly audible and

articulated at a volume equal to that used to announce the 900 number. The cost of the call shall be stated immediately prior to or after the 900 number is stated.

(F) Solicitations that appear in print shall include, in clear, visible, easily readable, and conspicuously presented letters and numbers, the cost of calling the 900 number. The printed disclosure of the cost of the call shall be displayed directly above, below, or adjacent to the number. The lettering of the cost disclosure shall be in no less than 10-point type.

(4) If the information-access service is aimed at or likely to be of interest to minors, solicitations that appear in print shall contain a statement, in at least the same size print as that used to disclose the 900 number, that persons under the age of 18 years should obtain parental consent before calling. If the solicitation is through a broadcast, this statement shall be of the same audibility as that used to disclose the 900 number.

(d) It shall be unlawful for any person to solicit or sell an information-access service in any manner related to a sweepstakes.

(e) Solicitations made to persons in this state offering the opportunity to participate in a sweepstakes shall, with respect to each prize offered, set forth clearly, conspicuously, and in easily readable letters the odds of receiving that prize, described in whole Arabic numerals in a format such as: "1 chance in 100,000" or "1:100,000." If the odds depend upon the number of entries and the number of persons solicited is controlled by the sponsor of the promotion, the solicitation shall set forth the reasonable expectation of entries. If the odds depend upon the number of entries received and the number of persons solicited is not controlled by the sponsor of the sweepstakes, a statement to the effect that the odds depend on the number of entries received shall be sufficient. If more than one prize is offered, the odds shall be separately stated for each prize. The disclosure required to be made pursuant to this subdivision shall be made immediately adjacent to the first identification of the prize to which it relates or in a separate section entitled "Consumer Disclosure" or "Official Rules." These titles shall be printed in no less than 10-point boldface type. The consumer disclosure section shall be clearly and conspicuously disclosed in the solicitation. There shall be a statement referring the recipient of the solicitation to the consumer disclosure section in the main text of the solicitation in close proximity to the description of the prizes, and the odds shall be disclosed within the top 25 percent of the consumer disclosure section. If the consumer disclosure section does not appear on the same page as the statement referring the recipient of the solicitation to this section, the statement shall indicate where the consumer disclosure section is located. If the odds appear in the section entitled "Consumer Disclosure" or "Official Rules," there shall be a clear and conspicuous statement in the main text of the solicitation in close proximity to the description of the prizes that the odds to the

recipient of obtaining the prize or prizes will be found elsewhere, and the statement shall set forth where they will be found. It is not a violation of this section to reference the official rules and the odds in the same statement as long as the statement referencing the official rules and the odds is in the main text of the solicitation in close proximity to the description of the prizes. For example, a statement such as: "See official rules (on (reference to location of rules if not on same page)) for odds and other details" or a similar statement meets the requirements of this provision. This provision shall not apply to broadcast solicitations for sweepstakes in which the winners will be selected in a random drawing in which the odds depend on the number of entries received, provided that those solicitations shall disclose where the official rules are available and the official rules shall set forth the odds of winning in accordance with this subdivision.

(f) If any incentive is offered in a solicitation for an information-access service, the solicitation shall clearly and conspicuously disclose all restrictions, qualifications, and deadlines that must be complied with in order to obtain the incentive being offered.

(g) No person soliciting callers for an information-access service shall represent directly or by implication that the person being solicited is part of a significantly limited group selected to receive an incentive, unless that is true and the number of recipients who will be receiving the solicitation is clearly and conspicuously set forth in the solicitation.

(h) It is unlawful for any person to solicit or sell an information-access service to any person in the following manner:

(1) The solicitation offers to persons in this state who respond to the solicitation by calling a 900 number any incentive that:

(A) Requires the recipient to purchase goods or services from the information provider in order to utilize the incentive. However, this subparagraph does not apply to offers where the incentive is a "cents-off" coupon that is usable only for the purchase of the offeror's own brand name product or products, the total value of the "cents-off" coupon offered is clearly and conspicuously disclosed in the offer, the total value of the "cents-off" coupon does not exceed five dollars ($5), the "cents-off" coupon is to be utilized to reduce the price of those products at retail stores in the recipient's area, and at least 60 percent of the revenue per month of the offeror is derived from the sale of the product or products being purchased without the use of the "cents-off" coupons.

(B) Requires the recipient to purchase goods or services from any third party in order to utilize the incentive unless:

(i) The fact that a purchase or payment is required in order to utilize the incentive is disclosed in the solicitation.

(ii) A representative sample of the establishments at which the incentive may be redeemed is disclosed in the solicitation.

(iii) If the incentive entitles the recipient to save money on the purchase of goods or services, the incentive is described as a cents-off, discount coupon, or similar term that clearly indicates that it is redeemable only for savings on purchases of goods or services.

(2) The solicitation states or implies that the caller is likely to receive one of the prizes offered, by representing in the solicitation that other named persons have already won the other prizes being offered in the solicitation and that the recipient of the solicitation is therefore likely to receive the prize that has not been won by the other persons named in the solicitation, unless the recipient's odds of receiving the remaining prize are clearly and conspicuously disclosed in the solicitation in close proximity to the list of the other named persons.

(i) Nothing contained in this section shall be deemed to render lawful any activity that otherwise would violate Section 17537.

(j) No information-access service shall offer a game of skill in which the cost of the call is billed on a usage-sensitive basis and in which answers to multiple choice questions of increasing difficulty are required in order to win, unless the solicitation clearly and conspicuously discloses the percentage of contestants anticipated to answer all questions correctly based on prior experience or, if the game is being operated for the first time, based on a good faith estimate.

(k) This section does not apply to a regional telephone operating company, interexchange carrier, or local telephone company operating in those capacities, that in good faith telecommunicates an information-access program without knowledge that the program or related advertising violates any provision of this section, Section 17539.55, or Section 17539.6.

(*l*) Neither this section, Section 17539.55, nor Section 17539.6 applies to the California State Lottery.

SEC. 17. Section 17539.55 of the Business and Professions Code is amended to read:

17539.55. (a) It shall be unlawful to operate a sweepstakes in this state through the use of a 900 number, unless the information provider registers with the Department of Justice as provided in this section within 10 days after causing any advertisement for the sweepstakes to be directed to any person in this state.

(b) The registration shall include the following information:

(1) Each 900 number to be used in the sweepstakes.

(2) The name and address of the information provider including corporate identity, if any, and the name and address for the information provider's agent for service of process within the state.

(3) A copy of the information provider's audio text, prerecorded, or live operator scripts.

(4) A copy of the official rules for the sweepstakes.

(5) For television, video, or any on-screen advertisements, a copy of the storyboard and videotape.

(6) For radio advertisements, a copy of the script and audio cassette recording.

(7) For print or electronic form transmitted over the Internet, a copy of all advertisements.

(8) For direct mail solicitations, a copy of all principal solicitations.

(9) For telephone solicitations, a copy of the script.

(10) The names of the carriers which the information provider plans to utilize to carry the 900 number calls.

(c) The information provider shall pay an annual registration fee of fifty dollars ($50) for each 900 number used for sweepstakes purposes.

(d) It shall be unlawful for any information provider that operates a sweepstakes to make reference, in any contact with the public, to the fact that the information provider is registered with the Department of Justice, as required by this section, or in any other manner imply that such registration represents approval of the sweepstakes by the Department of Justice.

SEC. 18. Section 16 of this bill incorporates amendments to Section 17539.5 of the Business and Professions Code proposed by both this bill and SB 1476. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 17539.5 of the Business and Professions Code, and (3) this bill is enacted after SB 1476, in which case Section 15 of this bill shall not become operative.

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 600

An act to amend Section 10856 of the Revenue and Taxation Code, and to amend Sections 4456 and 9553 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 18, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 10856 of the Revenue and Taxation Code is amended to read:

10856. (a) Except as provided in Section 9553 of the Vehicle Code, upon receipt of the application for renewal of registration, the department shall collect the required fee for the current registration year. No penalty shall be imposed if the department receives the application prior to or on the date the vehicle is first operated, moved, or left standing upon any highway during its current registration year and the applicant has timely filed, pursuant to subdivision (a) of Section 4604 of the Vehicle Code, a certification that the vehicle will not be operated, moved, or left standing upon any highway during the current registration year without first making an application for registration of the vehicle, including full payment of fees.

(b) If an application for renewal of registration is accompanied by an application for transfer of title, that application may be made without incurring a penalty for delinquent payment of fees not later than 20 days after the date the vehicle is first operated, moved, or left standing on any highway if a certification pursuant to subdivision (a) of Section 4604 of the Vehicle Code was timely filed with the department.

(c) Upon receipt of an application for original registration, the department shall collect the required fee for the current registration year. No penalty shall be imposed if the department receives the application and fee within 20 days after the fee becomes due.

SEC. 2. Section 4456 of the Vehicle Code is amended to read:

4456. (a) When selling a vehicle, dealers and lessor-retailers shall use numbered report-of-sale forms issued by the department. The forms shall be used in accordance with the following terms and conditions:

(1) The dealer or lessor-retailer shall attach for display a copy of the report of sale on the vehicle before the vehicle is delivered to the purchaser.

(2) The dealer or lessor-retailer shall submit to the department an application accompanied by all fees and penalties due for registration or transfer of registration of the vehicle within 30 days from the date of sale, as provided in subdivision (c) of Section 9553, if the vehicle is a used vehicle, and 20 days if the vehicle is a new vehicle. Penalties due for noncompliance with this paragraph shall be paid by the dealer or lessor-retailer. The dealer or lessor-retailer shall not charge the purchaser for the penalties.

(3) As part of an application to transfer registration of a used vehicle, the dealer or lessor-retailer shall include all of the following information on the certificate of title, application for a duplicate certificate of title, or form prescribed by the department:

(A) Date of sale and report of sale number.

(B) Purchaser's name and address.

(C) Dealer's name, address, number, and signature or signature of authorized agent.

(D) Salesperson number.

(4) If the department returns an application and the application was first received by the department within 30 days of the date of sale of the vehicle if the vehicle is a used vehicle, and 20 days if the vehicle is a new vehicle, the dealer or lessor-retailer shall submit a corrected application to the department within 50 days from the date of sale of the vehicle if the vehicle is a used vehicle, and 40 days if the vehicle is a new vehicle, or within 30 days from the date that the application is first returned by the department if the vehicle is a used vehicle, and 20 days if the vehicle is a new vehicle, whichever is later.

(5) If the department returns an application and the application was first received by the department more than 30 days from the date of sale of the vehicle if the vehicle is a used vehicle, and 20 days if the vehicle is a new vehicle, the dealer or lessor-retailer shall submit a corrected application to the department within 50 days from the date of sale of the vehicle if the vehicle is a used vehicle, and 40 days if the vehicle is a new vehicle.

(6) An application first received by the department more than 50 days from the date of sale of the vehicle if the vehicle is a used vehicle, and 40 days if the vehicle is a new vehicle, is subject to the penalties specified in subdivisions (a) and (b) of Section 4456.1.

(7) The dealer or lessor-retailer shall report the sale pursuant to Section 5901.

(b) (1) A transfer that takes place through a dealer conducting a wholesale motor vehicle auction shall be reported to the department by that dealer on a single form approved by the department. The completed form shall contain, at a minimum, all of the following information:

(A) The name and address of the seller.

(B) The seller's dealer number, if applicable.

(C) The date of delivery to the dealer conducting the auction.

(D) The actual mileage of the vehicle as indicated by the vehicle's odometer at the time of delivery to the dealer conducting the auction.

(E) The name, address, and occupational license number of the dealer conducting the auction.

(F) The name, address, and occupational license number of the buyer.

(G) The signature of the dealer conducting the auction.

(2) Submission of the completed form specified in paragraph (1) to the department shall fully satisfy the requirements of subdivision (a) and subdivision (a) of Section 5901 with respect to the dealer selling at auction and the dealer conducting the auction.

(3) The single form required by this subdivision does not relieve a dealer of any obligation or responsibility that is required by any other provision of law.

(c) A vehicle displaying a copy of the report of sale may be operated without license plates or registration card until either of the following, whichever occurs first:

(1) The license plates and registration card are received by the purchaser.

(2) A six-month period, commencing with the date of sale of the vehicle, has expired.

SEC. 3. Section 9553 of the Vehicle Code is amended to read:

9553. (a) A penalty shall be added upon any application for renewal of registration or any application for renewal of special license plates made after midnight of the expiration date of the registration or special plates, except as provided in Section 4604 or 9706, or in subdivision (b).

(b) Except as provided in subdivision (c), when renewal fee penalties have not accrued with respect to a vehicle and the vehicle is transferred, the transferee has 20 days from the date of the transfer to pay the registration fees which become due without payment of any penalties that otherwise would be required under subdivision (a) or to file a certification pursuant to subdivision (a) of Section 4604 if the vehicle will not be operated, moved, or left standing upon any highway during the subsequent registration year without first making application for registration of the vehicle, including full payment of all fees.

(c) (1) A dealer or lessor-retailer submitting an application for registration or transfer of a used vehicle shall have 30 days from the date of sale to submit the fees, without the penalty that otherwise would be required under subdivision (a).

(2) This subdivision does not apply to penalties due or accrued prior to the date of sale by the dealer or lessor-retailer.

(d) If the fee specified in Sections 9255 and 9257 is not paid within 20 days after it becomes delinquent, a penalty shall be added thereto.

SEC. 4. Section 9553 of the Vehicle Code is amended to read:

9553. (a) A penalty shall be added upon any application for renewal of registration or any application for renewal of special license plates made after midnight of the expiration date of the registration or special plates, except as provided in Section 4604 or 9706, or in subdivision (b).

(b) Except as provided in subdivision (c), when renewal fee penalties have not accrued with respect to a vehicle and the vehicle is transferred, the transferee has 20 days from the date of the transfer to pay the registration fees which become due without payment of any penalties that otherwise would be required under subdivision (a) or to file a certification pursuant to subdivision (a) of Section 4604 if the vehicle will not be operated, moved, or left standing upon any highway during the subsequent registration year without first

making application for registration of the vehicle, including full payment of all fees.

(c) (1) A dealer or lessor-retailer submitting an application for registration or transfer of a used vehicle shall have 30 days from the date of sale to submit the fees, without the penalty that otherwise would be required under subdivision (a).

(2) This subdivision does not apply to penalties due or accrued prior to the date of sale by the dealer or lessor-retailer.

(d) If the fee specified in Sections 9255 and 9257 is not paid within 20 days after it becomes delinquent, a penalty shall be added thereto.

(e) In addition to the imposition of monetary fines or fees as specified in this section, delinquent registration may result in impoundment of the vehicle pursuant to Section 22651.

SEC. 5. Section 4 of this bill incorporates amendments to Section 9553 of the Vehicle Code proposed by both this bill and Senate Bill 2067. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 9553 of the Vehicle Code, and (3) this bill is enacted after Senate Bill 2067, in which case Section 3 of this bill shall not become operative.

CHAPTER 601

An act to amend Section 10770 of, and to repeal Section 10707 of, the Revenue and Taxation Code, to amend Section 27565 of the Streets and Highways Code, and to amend Section 16000 of, and to repeal Section 677 of, the Vehicle Code, relating to vehicles.

[Approved by Governor September 18, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 10707 of the Revenue and Taxation Code is repealed.

SEC. 2. Section 10770 of the Revenue and Taxation Code is amended to read:

10770. (a) If the fee for an original registration is not paid within 20 days after it becomes delinquent, a penalty equal to 20 percent of the fee shall be added and collected with the fee.

(b) A penalty of 20 percent of the license fee shall be added on any application for original or renewal of year-round or annual registration made later than midnight of the date of expiration or on or after the date penalties become due. This penalty shall be computed after the vehicle license fee has been combined with the registration and weight fees as provided in Sections 9250 and 9400 of the Vehicle Code.

(c) Notwithstanding subdivision (a), any penalty that became due prior to January 1, 1978, shall be computed at the rate of penalty which was then in effect.

SEC. 2.5. Section 27565 of the Streets and Highways Code is amended to read:

27565. (a) The department, in cooperation with the district and all known entities planning to implement a toll facility in this state, shall develop and adopt functional specifications and standards for an automatic vehicle identification system, in compliance with all of the following objectives:

(1) In order to be detected, the driver shall not be required to reduce speed below the applicable speed for the type of facility being used.

(2) The vehicle owner shall not be required to purchase or install more than one device to use on all toll facilities, but may be required to have a separate account or financial arrangement for the use of these facilities.

(3) The facility operators shall have the ability to select from different manufacturers and vendors. The specifications and standards shall encourage multiple bidders, and shall not have the effect of limiting the facility operators to choosing a system that is able to be supplied by only one manufacturer or vendor.

(b) Except as provided in subdivision (c), any automatic vehicle identification system purchased or installed after January 1, 1991, shall comply with the specifications and standards adopted pursuant to subdivision (a).

(c) Subdivision (b) does not apply to an interim automatic vehicle identification system for which a contract is entered into between an entity planning to implement a toll facility and the supplier of the interim system prior to January 1, 1994, if both of the following requirements are met:

(1) The department has made a written determination that the installation and operation of the interim system will expedite the completion of the toll facility and its opening to public use.

(2) The entity planning to implement the toll facility has entered into an agreement with the department to install, within five years after any portion of the toll facility is opened for public use, an automatic vehicle identification system meeting the specifications and standards adopted pursuant to subdivision (a).

(d) The automated vehicle identification system developed by the department pursuant to subdivision (a) shall be capable of identifying various types of vehicles, including, but not limited to, commercial vehicles.

SEC. 3. Section 677 of the Vehicle Code is repealed.

SEC. 4. Section 16000 of the Vehicle Code is amended to read:

16000. (a) The driver of every motor vehicle who is in any manner involved in an accident originating from the operation of a motor vehicle on any street or highway or any reportable off-highway

accident defined in Section 16000.1 that has resulted in damage to the property of any one person in excess of five hundred dollars ($500) or in bodily injury or in the death of any person shall, within 10 days after the accident, report the accident, either personally or through an insurance agent, broker, or legal representative, on a form approved by the department to the office of the department at Sacramento, subject to the provisions of this chapter. The driver shall identify on the form, by name and current residence address, if available, any person involved in the accident complaining of bodily injury.

(b) (1) Except as provided in paragraph (2), a report is not required pursuant to subdivision (a) if the motor vehicle involved in the accident was owned or leased by, or under the direction of, the United States, this state, another state, or a local agency.

(2) The driver of a vehicle that is owned or operated by a publicly owned or operated transit system, or that is operated under contract with a publicly owned or operated transit system, and used to provide regularly scheduled transportation to the general public or for other official business of the system, shall, within 10 days of the occurrence of the accident, report to the transit system any accident of a type otherwise required to be reported pursuant to subdivision (a). The transit system shall maintain records of any report filed pursuant to this paragraph.

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 602

An act to add Section 19993.05 to the Government Code, relating to state employees.

[Approved by Governor September 18, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 19993.05 is added to the Government Code, to read:

19993.05. (a) This section shall be known and may be cited as the Freedom of Financial Choice Act.

(b) The department shall permit officers and employees participating in a tax-deferred savings plan established by the department under this chapter or Chapter 9 (commencing with Section 19999.5) to invest in a range of investment options including, but not limited to, stocks and bonds listed with and traded on the New York Stock Exchange, the American Stock Exchange, or the National Market System sponsored by the National Association of Securities Dealers (NASD) and the National Association of Securities Dealers Automated Quotations system (NASDAQ), or any successor association, annuities, and shares or units of open-ended registered investment companies. However, the department may limit the number of banks, mutual fund companies, investment brokers, life insurance companies, and other financial institutions offering investments under the plans as necessary to ensure the continued qualification of the plan under the Internal Revenue Code and the cost-efficient and timely administration of the plans.

(c) No fiduciary of a plan established by the department under this chapter or Chapter 9 (commencing with Section 19999.5) shall be liable for any loss that results from any individual investment choice made by a participant of a plan, except that this subdivision shall not extend to any malfeasance or misfeasance by any fiduciary of a plan established by the department under this chapter or Chapter 9 (commencing with Section 19999.5).

(d) Notwithstanding any other provision of law, the Deferred Compensation Plan Fund (0915) is exempt from the application of Article 2 (commencing with Section 11270) of Chapter 3 of Part 3 of Division 3.

(e) Notwithstanding Sections 7550.5 and 9795, the director shall prepare and submit to the Legislature on or before April 15, 1999, a report on the department's plan to implement this section.

CHAPTER 603

An act to amend Sections 19801, 19830, 19834, 19834A, 19851, 19851A, and 19872 of, and to add Section 19851.5 to, the Business and Professions Code, relating to gambling.

[Approved by Governor September 18, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 19801 of the Business and Professions Code is amended to read:

19801. The Legislature hereby finds and declares all of the following:

(a) The longstanding public policy of this state disfavors the business of gambling. State law prohibits commercially operated lotteries, banked or percentage games, and gambling machines, and strictly regulates parimutuel wagering on horse racing. To the extent that state law categorically prohibits certain forms of gambling and prohibits gambling devices, nothing herein shall be construed, in any manner, to reflect a legislative intent to relax those prohibitions.

(b) Gambling can become addictive and should not be promoted or legitimized as entertainment for children and families.

(c) Unregulated gambling enterprises are inimical to the public health, safety, welfare, and good order. Accordingly, no person in this state has a right to operate a gambling enterprise except as may be expressly permitted by the laws of this state and by the ordinances of local governmental bodies.

(d) It is the policy of this state that gambling activities that are not expressly prohibited or regulated by state law may be prohibited or regulated by local government. Moreover, it is the policy of this state that no new cardroom may be opened in a city, county, or city and county in which a cardroom was not operating on and before January 1, 1984, except upon the affirmative vote of the electors of that city, county, or city and county.

(e) It is not the purpose of this chapter to expand opportunities for gambling, or to create any right to operate a gambling enterprise in this state or to have a financial interest in any gambling enterprise. Rather, it is the purpose of this chapter to regulate businesses that offer otherwise lawful forms of gambling games.

(f) Public trust that permissible gambling will not endanger public health, safety, or welfare requires that comprehensive measures be enacted to ensure that such gambling is free from criminal and corruptive elements, that it is conducted honestly and competitively, and that it is conducted in suitable locations.

(g) Public trust and confidence can only be maintained by strict and comprehensive regulation of all persons, locations, practices, associations, and activities related to the operation of lawful gambling establishments and the manufacture or distribution of permissible gambling equipment.

(h) All gambling operations, all persons having a significant involvement in gambling operations, all establishments where gambling is conducted, and all manufacturers, sellers, and distributors of gambling equipment must be licensed and regulated to protect the public health, safety, and general welfare of the residents of this state as an exercise of the police powers of the state.

(i) To ensure that gambling is conducted honestly, competitively, and free of criminal and corruptive elements, all licensed gambling establishments in this state must remain open to the general public and the access of the general public to licensed gambling activities must not be restricted in any manner, except as provided by the Legislature. However, subject to state and federal prohibitions against discrimination, nothing herein shall be construed to preclude the exclusion of unsuitable persons from licensed gambling establishments in the exercise of reasonable business judgment.

(j) In order to effectuate state policy as declared herein, it is necessary that gambling establishments, activities, and equipment be licensed, that persons participating in those activities be licensed or registered, that certain transactions, events, and processes involving gambling establishments and owners of gambling establishments be subject to prior approval or permission, that unsuitable persons not be permitted to associate with gambling activities or gambling establishments, and that gambling activities take place only in suitable locations. Any license or permit issued, or other approval granted pursuant to this chapter, is declared to be a revocable privilege, and no holder acquires any vested right therein or thereunder.

(k) The location of lawful gambling premises, the hours of operation of those premises, the number of tables permitted in those premises, and wagering limits in permissible games conducted in those premises are proper subjects for regulation by local governmental bodies. However, consideration of those same subjects by a state regulatory agency, as specified in this chapter, is warranted when local governmental regulation respecting those subjects is inadequate or the regulation fails to safeguard the legitimate interests of residents in other governmental jurisdictions.

(*l*) The exclusion or ejection of certain persons from gambling establishments is necessary to effectuate the policies of this chapter and to maintain effectively the strict regulation of licensed gambling.

(m) Records and reports of cash and credit transactions involving gambling establishments may have a high degree of usefulness in criminal and regulatory investigations and, therefore, licensed gambling operators may be required to keep records and make reports concerning significant cash and credit transactions.

SEC. 2. Section 19830 of the Business and Professions Code is amended to read:

19830. (a) The division may adopt regulations for the administration and enforcement of this chapter. To the extent appropriate, regulations of the division shall take into consideration the operational differences of large and small establishments. The board may adopt regulations relating to its internal procedures that may be required and that are not inconsistent with this chapter.

(b) Subject to subdivision (d), Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government

Code does not apply to the following regulations of the division, if adopted within 90 days after the effective date of this chapter. The division may, however, amend or repeal, or both amend and repeal, until January 31, 1999, those regulations which were previously adopted pursuant to this subdivision:

(1) Regulations described in subdivisions (a), (b), (e), (g), (h), (i) to (n), inclusive, (p), and (q) of Section 19834.

(2) Regulations adopted for the purpose of implementing Section 62 of the act that enacted this chapter.

(c) Any regulation adopted pursuant to subdivision (b) shall be filed with the Secretary of State and shall be effective immediately upon that filing.

(d) Except as otherwise provided in this subdivision, no regulation adopted pursuant to subdivision (b) shall be valid after September 1, 1998, unless the regulation has been subsequently readopted by the division in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, subject to all of the following:

(1) This subdivision does not apply to a regulation that is exempted from Article 5 (commencing with Section 11346) of Chapter 3.5 of Division 3 of Title 2 of the Government Code, by operation of subdivision (a) of Section 11346.1 of the Government Code.

(2) If, prior to September 1, 1998, the division has mailed a notice described in Section 11346.4 of the Government Code with respect to a regulation adopted pursuant to subdivision (b), the regulation shall not cease to be effective pursuant to this subdivision until the earlier of one of the following events:

(A) The readopted regulation is filed with the Secretary of State pursuant to subdivision (a) of Section 11349.3, or subdivision (e) of Section 11349.5, of the Government Code.

(B) The readopted regulation has been disapproved by the Office of Administrative Law and the time within which a request for review may be filed pursuant to Section 11349.5 of the Government Code has expired.

(C) The readopted regulation is disapproved by the Office of Administrative Law, and the Governor transmits a decision pursuant to subdivision (c) of Section 11349.5 of the Government Code affirming the disapproval.

SEC. 3. Section 19834 of the Business and Professions Code is amended to read:

19834. The regulations adopted by the division shall do all of the following:

(a) With respect to applications, registrations, investigations, and fees, the regulations shall include, but not be limited to, provisions that do all of the following:

(1) Prescribe the method and form of application and registration.

(2) Prescribe the information to be furnished by any applicant, licensee, or registrant concerning, as appropriate, the person's personal history, habits, character, associates, criminal record, business activities, organizational structure, and financial affairs, past or present.

(3) Prescribe the information to be furnished by an owner licensee relating to the licensee's gambling employees.

(4) Require fingerprinting or other methods of identification of an applicant, licensee, or employee of a licensee.

(5) Prescribe the manner and method of collection and payment of fees and issuance of licenses.

(b) Provide for the approval of game rules and equipment by the division to ensure fairness to the public and compliance with state laws.

(c) Implement the provisions of this chapter relating to licensing.

(d) Require owner licensees to report and keep records of transactions, as determined by the division, involving cash or credit. The regulations may include, without limitation, regulations requiring owner licensees to file with the division reports similar to those required by Sections 5313 and 5314 of Title 31 of the United States Code, and by Sections 103.22 and 103.23 of Title 31 of the Code of Federal Regulations, and any successor provisions thereto, from financial institutions, as defined in Section 5312 of Title 31 of the United States Code and Section 103.11 of Title 31 of the Code of Federal Regulations, and any successor provisions.

(e) Provide for the receipt of protests and written comments on an application by public agencies, public officials, local governing bodies, or residents of the location of the gambling establishment or future gambling establishment.

(f) Provide for the disapproval of advertising by licensed gambling establishments that is determined by the division to be deceptive to the public. Regulations adopted by the division for advertising by licensed gambling establishments shall be consistent with the advertising regulations adopted by the California Horse Racing Board and the Lottery Commission. Advertisement that appeals to children or adolescents, or offers gambling as a means of becoming wealthy is presumptively deceptive.

(g) Govern all of the following:

(1) The extension of credit.

(2) The cashing, deposit, and redemption of checks or other negotiable instruments.

(3) The verification of identification in monetary transactions.

(h) Prescribe minimum procedures for adoption by owner licensees to exercise effective control over their internal fiscal and gambling affairs, which shall include, but not be limited to, provisions for all of the following:

(1) The safeguarding of assets and revenues, including the recording of cash and evidences of indebtedness.

(2) Prescribing the manner in which compensation from games and gross revenue shall be computed and reported by an owner licensee.

(3) The provision of reliable records, accounts, and reports of transactions, operations, and events, including reports to the division.

(i) Provide for the adoption and use of internal audits, whether by qualified internal auditors or by certified public accountants. As used in this subdivision, "internal audit" means a type of control that operates through the testing and evaluation of other controls and that is also directed toward observing proper compliance with the minimum standards of control prescribed in subdivision (h).

(j) Require periodic financial reports from each owner licensee.

(k) Specify standard forms for reporting financial conditions, results of operations, and other relevant financial information.

(*l*) Formulate a uniform code of accounts and accounting classifications to ensure consistency, comparability, and effective disclosure of financial information.

(m) Prescribe intervals at which the information in subdivisions (j) and (k) shall be furnished to the division.

(n) Require audits to be conducted, in accordance with generally accepted auditing standards, of the financial statements of all owner licensees whose annual gross revenues equal or exceed a specified sum. However, nothing herein shall be construed to limit the division's authority to require audits of any owner licensee. Audits, compilations, and reviews provided for in this subdivision shall be made by independent certified public accountants licensed to practice in this state.

(o) Restrict, limit, or otherwise regulate any activity that is related to the conduct of controlled gambling, consistent with the purposes of this chapter.

(p) Define and limit the area, games, and equipment permitted, or the method of operation of games and equipment, when, at the request of a sheriff or district attorney, the division determines that local regulation of these subjects is insufficient to protect the health, safety, or welfare of residents in geographical areas proximate to a gambling establishment.

(q) Prohibit gambling establishments from cashing checks drawn against any federal, state, or county fund, including, but not limited to, social security, unemployment insurance, disability payments, or public assistance payments.

However, a gambling establishment shall not be prohibited from cashing any payroll checks or checks for the delivery of goods or services that are drawn against a federal, state, or county fund.

Gambling establishments shall send the division copies of all dishonored or uncollectible checks at the end of each quarter. In order to ensure that those who patronize gambling establishments are responsible for their debts, the division shall disseminate

information relating to dishonored or uncollectible checks to other gambling establishments in that geographical area.

SEC. 4. Section 19834A of the Business and Professions Code is amended to read:

19834A. The regulations adopted by the commission shall do all of the following:

(a) With respect to applications, registrations, investigations, and fees, the regulations shall include, but not be limited to, provisions that do all of the following:

(1) Prescribe the method and form of application and registration.

(2) Prescribe the information to be furnished by any applicant, licensee, or registrant concerning, as appropriate, the person's personal history, habits, character, associates, criminal record, business activities, organizational structure, and financial affairs, past or present.

(3) Prescribe the information to be furnished by an owner licensee relating to the licensee's gambling employees.

(4) Require fingerprinting or other methods of identification of an applicant, licensee, or employee of a licensee.

(5) Prescribe the manner and method of collection and payment of fees and issuance of licenses.

(b) Provide for the approval of game rules and equipment by the division to ensure fairness to the public and compliance with state laws.

(c) Implement the provisions of this chapter relating to licensing.

(d) Require owner licensees to report and keep records of transactions, as determined by the division, involving cash or credit. The regulations may include, without limitation, regulations requiring owner licensees to file with the division reports similar to those required by Sections 5313 and 5314 of Title 31 of the United States Code, and by Sections 103.22 and 103.23 of Title 31 of the Code of Federal Regulations, and any successor provisions thereto, from financial institutions, as defined in Section 5312 of Title 31 of the United States Code and Section 103.11 of Title 31 of the Code of Federal Regulations, and any successor provisions.

(e) Provide for the receipt of protests and written comments on an application by public agencies, public officials, local governing bodies, or residents of the location of the gambling establishment or future gambling establishment.

(f) Provide for the disapproval of advertising by licensed gambling establishments that is determined by the division to be deceptive to the public. Regulations adopted by the division for advertising by licensed gambling establishments shall be consistent with the advertising regulations adopted by the California Horse Racing Board and the Lottery Commission. Advertisement that appeals to children or adolescents or that offers gambling as a means of becoming wealthy is presumptively deceptive.

(g) Govern all of the following:

(1) The extension of credit.

(2) The cashing, deposit, and redemption of checks or other negotiable instruments.

(3) The verification of identification in monetary transactions.

(h) Prescribe minimum procedures for adoption by owner licensees to exercise effective control over their internal fiscal and gambling affairs, which shall include, but not be limited to, provisions for all of the following:

(1) The safeguarding of assets and revenues, including the recording of cash and evidences of indebtedness.

(2) Prescribing the manner in which compensation from games and gross revenue shall be computed and reported by an owner licensee.

(3) The provision of reliable records, accounts, and reports of transactions, operations, and events, including reports to the division.

(i) Provide for the adoption and use of internal audits, whether by qualified internal auditors or by certified public accountants. As used in this subdivision, "internal audit" means a type of control that operates through the testing and evaluation of other controls and that is also directed toward observing proper compliance with the minimum standards of control prescribed in subdivision (h).

(j) Require periodic financial reports from each owner licensee.

(k) Specify standard forms for reporting financial conditions, results of operations, and other relevant financial information.

(*l*) Formulate a uniform code of accounts and accounting classifications to ensure consistency, comparability, and effective disclosure of financial information.

(m) Prescribe intervals at which the information in subdivisions (j) and (k) shall be furnished to the division.

(n) Require audits to be conducted, in accordance with generally accepted auditing standards, of the financial statements of all owner licensees whose annual gross revenues equal or exceed a specified sum. However, nothing herein shall be construed to limit the division's authority to require audits of any owner licensee. Audits, compilations, and reviews provided for in this subdivision shall be made by independent certified public accountants licensed to practice in this state.

(o) Restrict, limit, or otherwise regulate any activity that is related to the conduct of controlled gambling, consistent with the purposes of this chapter.

(p) Define and limit the area, games, hours of operation, number of tables, wagering limits, and equipment permitted, or the method of operation of games and equipment, if the division determines that local regulation of these subjects is insufficient to protect the health, safety, or welfare of residents in geographical areas proximate to a gambling establishment.

(q) Prohibit gambling establishments from cashing checks drawn against any federal, state, or county fund, including, but not limited

to, social security, unemployment insurance, disability payments, or public assistance payments. However, a gambling establishment shall not be prohibited from cashing any payroll checks or checks for the delivery of goods or services that are drawn against a federal, state, or county fund.

Gambling establishments shall send the commission copies of all dishonored or uncollectible checks at the end of each quarter.

(r) Provide for standards, specifications, and procedures governing the manufacture, distribution, including the sale and leasing, inspection, testing, location, operation, repair, and storage of gambling equipment, and for the licensing of persons engaged in the business of manufacturing, distributing, including the sale and leasing, inspection, testing, repair, and storage of gambling equipment.

SEC. 5. Section 19851 of the Business and Professions Code is amended to read:

19851. (a) The division shall deny a gambling license with respect to any gambling establishment that is located in a city, county, or city and county that does not have an ordinance governing all of the following matters:

(1) The hours of operation of gambling establishments.

(2) Patron security and safety in and around the gambling establishments.

(3) The location of gambling establishments.

(4) Wagering limits in gambling establishments.

(5) The number of gambling tables in each gambling establishment and in the jurisdiction.

(b) In any city, county, or city and county in which the local gambling ordinance does not govern the matters specified in subdivision (a), any amendment to the ordinance to govern those matters is not subject to Section 19950.1. If the ordinances require that a local election be conducted to add these matters to the ordinance, and the ordinance only provides for private clubs by vote of the people, then the city, county, or city and county may have until July 1, 2000, to have these matters contained in the local ordinance.

(c) This section shall remain in effect only until the occurrence of one of the events specified in Section 66 of the act that added this chapter, and as of that date is repealed, unless a later enacted statute, which is enacted before the occurrence of one of the events specified in Section 66 of the act that added this chapter, deletes or extends that date.

SEC. 6. Section 19851A of the Business and Professions Code is amended to read:

19851A. (a) The commission shall deny a gambling license with respect to any gambling establishment that is located in a city, county, or city and county that does not have an ordinance governing all of the following matters:

(1) The hours of operation of gambling establishments.

(2) Patron security and safety in and around the gambling establishments.

(3) The location of gambling establishments.

(4) Wagering limits in gambling establishments.

(5) The number of gambling tables in each gambling establishment and in the jurisdiction.

(b) In any city, county, or city and county in which the local gambling ordinance does not govern the matters specified in subdivision (a), any amendment to the ordinance to govern those matters is not subject to Section 19950.1, provided that a local election is required to add these matters, and the ordinance only provides for private clubs by vote of the people, and that the ordinance is amended to contain these matters on or before July 1, 2000.

(c) This section shall become operative on the occurrence of one of the events specified in Section 66 of the act that added this section to the Business and Professions Code.

SEC. 7. Section 19851.5 is added to the Business and Professions Code, to read:

19851.5. Notwithstanding subdivision (i) of Section 19801, the division or commission shall not deny a license to a gambling establishment solely because it is not open to the public, provided that all of the following are true: (a) the gambling establishment is situated in a local jurisdiction that has an ordinance allowing only private clubs, and the gambling establishment was in operation as a private club under that ordinance on December 31, 1997, and met all applicable state and local gaming registration requirements; (b) the gambling establishment consists of no more than five gaming tables; (c) videotaped recordings of the entrance to the gambling room or rooms and all tables situated therein are made during all hours of operation by means of closed circuit television cameras, and these tapes are retained for a period of 30 days and are made available for review by the division or commission upon request; and (d) the gambling establishment is open to members of the private club and their spouses in accordance with membership criteria in effect as of December 31, 1997.

A gambling establishment meeting these criteria, in addition to the other requirements of this chapter, may be licensed to operate as a private club gambling establishment until July 1, 2000, or until the ownership or operation of the gambling establishment changes from the ownership or operation as of January 1, 1998, whichever occurs first. Operation of the gambling establishments after this date shall only be permitted if the local jurisdiction approves an ordinance, pursuant to Sections 19950.1 and 19950.2, authorizing the operation of gambling establishments that are open to the public. The commission shall adopt regulations implementing this section.

SEC. 8. Section 19872 of the Business and Professions Code is amended to read:

19872. (a) If at any time the division denies a license to an individual owner of any security issued by a corporation that applies for or holds an owner license, the owner of the security shall immediately offer the security to the issuing corporation for purchase. The corporation shall purchase the security so offered, for book value in cash as provided for in the articles of incorporation or the bylaws, and in no event in an amount greater than fair market value, within 30 calendar days after the date of the offer. If the fair market value, or book value as provided for in the articles on incorporation or bylaws, exceeds one million dollars ($1,000,000), the division may allow a period of time not to exceed 90 days for the purchase.

(b) Beginning upon the date when the division serves notice of the denial upon the corporation, it is unlawful for the denied security owner to do any of the following:

(1) Receive any dividend or interest upon any security described in subdivision (a).

(2) Exercise, directly or through any trustee or nominee, any voting right conferred by any security described in subdivision (a).

(3) Receive any remuneration in any form from the corporation for services rendered or for any other purpose.

(c) Every security issued by a corporate owner licensee shall bear a statement, on both sides of the certificate evidencing the security, of the restrictions imposed by this section.

(d) This section shall remain in effect only until the occurrence of one of the events specified in Section 66 of the act that added this chapter, and as of that date is repealed, unless a later enacted statute, which is enacted before the occurrence of one of the events specified in Section 66 of the act that added this chapter, deletes or extends that date.

CHAPTER 604

An act to amend Sections 66458, 66462, and 66477.1 of the Government Code, relating to local agencies.

[Approved by Governor September 18, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 66458 of the Government Code is amended to read:

66458. (a) The legislative body shall, at the meeting at which it receives the map or, at its next regular meeting after the meeting at which it receives the map, approve the map if it conforms to all the requirements of this chapter and any local subdivision ordinance

applicable at the time of approval or conditional approval of the tentative map and any rulings made thereunder. If the map does not conform, the legislative body shall disapprove the map.

(b) If the legislative body does not approve or disapprove the map within the prescribed time, or any authorized extension thereof, and the map conforms to all requirements and rulings, it shall be deemed approved, and the clerk of the legislative body shall certify or state its approval thereon.

(c) The meeting at which the legislative body receives the map shall be the date on which the clerk of the legislative body receives the map.

(d) The legislative body may provide, by ordinance, for the approval or disapproval of final maps by the city or county engineer, surveyor, or other designated official. The legislative body may also provide, by ordinance, that the official may accept, accept subject to improvement, or reject dedications and offers of dedications that are made by a statement on the map. Any ordinance adopted pursuant to this subdivision shall provide that (1) the designated official shall notify the legislative body at its next regular meeting after the official receives the map that the official is reviewing the map for final approval, (2) the designated official shall approve or disapprove the final map within 10 days following the meeting of the legislative body that was preceded by the notice in (4) below, (3) the designated official's action may be appealed to the legislative body, (4) the legislative body shall provide notice of any pending approval or disapproval by a designated official, which notice shall be attached and posted with the legislative body's regular agenda and shall be mailed to interested parties who request notice, and (5) the legislative body shall periodically review the delegation of authority to the designated official. Except as specifically authorized by this subdivision, the processing of final maps shall conform to all procedural requirements of this division.

SEC. 2. Section 66462 of the Government Code is amended to read:

66462. (a) If, at the time of approval of the final map by the legislative body, any public improvements required by the local agency pursuant to this division or local ordinance have not been completed and accepted in accordance with standards established by the local agency by ordinance applicable at the time of the approval or conditional approval of the tentative map, the legislative body, as a condition precedent to the approval of the final map, shall require the subdivider to enter into one of the following agreements specified by the local agency:

(1) An agreement with the local agency upon mutually agreeable terms to thereafter complete the improvements at the subdivider's expense.

(2) An agreement with the local agency to thereafter do either of the following:

(A) Initiate and consummate proceedings under an appropriate special assessment act or the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 for the financing and completion of all of the improvements.

(B) If the improvements are not completed under a special assessment act or the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5, to complete the improvements at the subdivider's expense.

(b) The standards may be adopted by reference, without posting or publishing them, if they have been printed in book or booklet form and three copies of the books or booklets have been filed for use and examination by the public in the office of the clerk of the legislative body.

(c) The local agency entering into any agreement pursuant to this section shall require that performance of the agreement be guaranteed by the security specified in Chapter 5 (commencing with Section 66499).

(d) The legislative body may provide, by ordinance, that the agreement entered into pursuant to this section may be entered into by a designated official, in accordance with standards adopted by the local agency. The designated official's action may be appealed to the legislative body for conformance with this chapter and any applicable local subdivision ordinance. Any ordinance adopted pursuant to this subdivision shall provide that the legislative body shall periodically review this delegation of authority to the designated official.

SEC. 3. Section 66477.1 of the Government Code is amended to read:

66477.1. (a) At the time the legislative body or the official designated pursuant to Section 66458 approves a final map, the legislative body or the designated official shall also accept, accept subject to improvement, or reject any offer of dedication. The clerk of the legislative body shall certify or state on the map the action by the legislative body or designated official.

(b) The legislative body of a county, or a county officer designated by the legislative body, may accept into the county road system, pursuant to Section 941 of the Streets and Highways Code, any road for which an offer of dedication has been accepted or accepted subject to improvements.

CHAPTER 605

An act to amend Section 1156.6 of, and to add Section 1114.5 to, the Harbors and Navigation Code, relating to vessels.

[Approved by Governor September 18, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 1114.5 is added to the Harbors and Navigation Code, to read:

1114.5. "Pilotage grounds" means all waters extending eastward from the precautionary area surrounding buoy SF to, and including, the Bays of San Francisco, San Pablo, and Suisun.

SEC. 2. Section 1156.6 of the Harbors and Navigation Code is amended 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 board, the executive director shall 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. The commission investigator shall report preliminary conclusions, including an assessment of the equipment's compliance with the relevant safety standards, to the executive director as soon as possible. If the equipment is found to be in violation of the relevant safety standards, the executive director shall immediately alert the Coast Guard Marine Safety Office. The commission investigator shall submit a written report to the incident review committee as established by subdivision (a) of Section 1180.3. The incident review committee, in turn, shall report its findings to the board. The board shall receive the incident review committee's findings which may include other reports, information, or statements from interested parties. The board shall specify, by regulation, the information which shall be contained in the report.

(b) This section applies to the pilotage grounds, as defined in Section 1114.5. Whenever a vessel passes outside of the pilotage grounds, the commission investigator's report shall include that fact along with a description of the incident.

(c) The record of the investigation and the board's findings and recommendations, if any, shall be a public record maintained by the board for 10 years.

CHAPTER 606

An act to amend Section 219 of the Code of Civil Procedure, to amend Section 1231.2 of the Evidence Code, to amend Section 3579 of the Government Code, to amend Section 1797.187 of the Health and Safety Code, to amend Section 6404.5 of the Labor Code, to amend Sections 76, 148.10, 11105, 11105.2, 12028.5, 13300, and 13519 of,

and to amend, repeal, and add Section 831.5 of, the Penal Code, and to amend Sections 1807.5 and 13351.5 of the Vehicle Code, relating to crimes.

[Approved by Governor September 18, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 219 of the Code of Civil Procedure is amended to read:

219. (a) Except as provided in subdivision (b), the jury commissioner shall randomly select jurors for jury panels to be sent to courtrooms for voir dire.

(b) (1) Notwithstanding subdivision (a), no peace officer, as defined in Section 830.1 and subdivision (a) of Section 830.2 of the Penal Code, shall be selected for voir dire in civil or criminal matters.

(2) Notwithstanding subdivision (a), no peace officer, as defined in subdivisions (b) and (c) of Section 830.2 of the Penal Code, shall be selected for voir dire in criminal matters.

SEC. 2. Section 1231.2 of the Evidence Code is amended to read:

1231.2. A peace officer may administer and certify oaths for purposes of this article.

SEC. 3. Section 3579 of the Government Code is amended to read:

3579. (a) In each case where the appropriateness of a unit is an issue, in determining an appropriate unit, the board shall take into consideration all of the following criteria:

(1) The internal and occupational community of interest among the employees, including, but not limited to, the extent to which they perform functionally related services or work toward established common goals, the history of employee representation with the employer, the extent to which the employees belong to the same employee organization, the extent to which the employees have common skills, working conditions, job duties, or similar educational or training requirements, and the extent to which the employees have common supervision.

(2) The effect that the projected unit will have on the meet and confer relationships, emphasizing the availability and authority of employer representatives to deal effectively with employee organizations representing the unit, and taking into account factors such as work location, the numerical size of the unit, the relationship of the unit to organizational patterns of the higher education employer, and the effect on the existing classification structure or existing classification schematic of dividing a single class or single classification schematic among two or more units.

(3) The effect of the proposed unit on efficient operations of the employer and the compatibility of the unit with the responsibility of

the higher education employer and its employees to serve students and the public.

(4) The number of employees and classifications in a proposed unit, and its effect on the operations of the employer, on the objectives of providing the employees the right to effective representation, and on the meet and confer relationship.

(5) The impact on the meet and confer relationship created by fragmentation of employee groups or any proliferation of units among the employees of the employer.

(b) There shall be a presumption that professional employees and nonprofessional employees shall not be included in the same representation unit. However, the presumption shall be rebuttable, depending upon what the evidence pertinent to the criteria set forth in subdivision (a) establishes.

(c) There shall be a presumption that all employees within an occupational group or groups shall be included within a single representation unit. However, the presumption shall be rebutted if there is a preponderance of evidence that a single representation unit is inconsistent with the criteria set forth in subdivision (a) or with the purposes of this chapter.

(d) Notwithstanding the foregoing provisions of this section, or any other provision of law, an appropriate group of skilled crafts employees shall have the right to be a single, separate unit of representation. Skilled crafts employees shall include, but not necessarily be limited to, employment categories such as carpenters, plumbers, electricians, painters, and operating engineers. The single unit of representation shall include not less than all skilled crafts employees at a campus or at a Lawrence Laboratory.

(e) Notwithstanding the foregoing provisions of this section, the only appropriate representation units including members of the academic senate of the University of California shall be either a single statewide unit consisting of all eligible members of the senate, or divisional units consisting of all eligible members of a division of the senate. In addition to the limitations of subdivision (q) of Section 3562, the scope of representation of any divisional unit shall be limited to those matters which have customarily been determined on a division basis, but the employer shall consult with the exclusive representative of a division on matters which would be within the scope of representation or consultation of a statewide representative. When 35 percent of the eligible members of the academic senate are represented by an exclusive representative or representatives in divisional units, the board, on petition of a representative or of an organization comprised of those representatives, shall conduct an election to determine if the eligible members of the entire senate wish thereafter to be represented by a representative or organization in a single unit on all matters within the scope of representation. Any other exclusive representative or organization of representatives or any employee organization meeting the requirements of subdivision

(a) of Section 3577 shall be entitled, on petition, to appear on the ballot, and in the event no choice receives a majority of the votes cast, the runoff provisions of subdivision (a) of Section 3577 shall be applicable.

(f) The board shall not determine that any unit is appropriate if it includes, together with other employees, employees who are defined as peace officers pursuant to subdivisions (b) and (c) of Section 830.2 of the Penal Code.

SEC. 4. Section 1797.187 of the Health and Safety Code is amended to read:

1797.187. A peace officer as described in Section 830.1, subdivision (a) of Section 830.2, or subdivision (g) of Section 830.3 of the Penal Code, while in the service of the agency or local agency which employs him or her, shall be notified by the agency or local agency if the peace officer is exposed to a known carcinogen, as defined by the International Agency for Research on Cancer, or as defined by its director, during the investigation of any place where any controlled substance, as defined in Section 11007 is suspected of being manufactured, stored, transferred, or sold, or any toxic waste spills, accidents, leaks, explosions, or fires.

The Commission on Peace Officers Standards and Training basic training course, and other training courses as the commission determines appropriate, shall include, on or before January 1, 1990, instruction on, but not limited to, the identification and handling of possible carcinogenic materials and the potential health hazards associated with these materials, protective equipment, and clothing available to minimize contamination, handling, and disposing of materials and measures and procedures that can be adopted to minimize exposure to possible hazardous materials.

SEC. 5. Section 6404.5 of the Labor Code is amended to read:

6404.5. (a) The Legislature finds and declares that regulation of smoking in the workplace is a matter of statewide interest and concern. It is the intent of the Legislature in enacting this section to prohibit the smoking of tobacco products in all (100 percent of) enclosed places of employment in this state, as covered by this section, thereby eliminating the need of local governments to enact workplace smoking restrictions within their respective jurisdictions. It is further the intent of the Legislature to create a uniform statewide standard to restrict and prohibit the smoking of tobacco products in enclosed places of employment, as specified in this section, in order to reduce employee exposure to environmental tobacco smoke to a level that will prevent anything other than insignificantly harmful effects to exposed employees, and also to eliminate the confusion and hardship that can result from enactment or enforcement of disparate local workplace smoking restrictions. Notwithstanding any other provision of this section, it is the intent of the Legislature that any area not defined as a "place of employment" pursuant to subdivision (d) or in which the smoking of tobacco products is not regulated

pursuant to subdivision (e) shall be subject to local regulation of smoking of tobacco products.

(b) No employer shall knowingly or intentionally permit, and no person shall engage in, the smoking of tobacco products in an enclosed space at a place of employment.

(c) For purposes of this section, an employer who permits any nonemployee access to his or her place of employment on a regular basis has not acted knowingly or intentionally if he or she has taken the following reasonable steps to prevent smoking by a nonemployee:

(1) Posted clear and prominent signs, as follows:

(A) Where smoking is prohibited throughout the building or structure, a sign stating "No smoking" shall be posted at each entrance to the building or structure.

(B) Where smoking is permitted in designated areas of the building or structure, a sign stating "Smoking is prohibited except in designated areas" shall be posted at each entrance to the building or structure.

(2) Has requested, when appropriate, that a nonemployee who is smoking refrain from smoking in the enclosed workplace.

For purposes of this subdivision, "reasonable steps" does not include (A) the physical ejection of a nonemployee from the place of employment or (B) any requirement for making a request to a nonemployee to refrain from smoking, under circumstances involving a risk of physical harm to the employer or any employee.

(d) For purposes of this section, "place of employment" does not include any of the following:

(1) Sixty-five percent of the guest room accommodations in a hotel, motel, or similar transient lodging establishment.

(2) Areas of the lobby in a hotel, motel, or other similar transient lodging establishment designated for smoking by the establishment. An establishment may permit smoking in a designated lobby area that does not exceed 25 percent of the total floor area of the lobby or, if the total area of the lobby is 2,000 square feet or less, that does not exceed 50 percent of the total floor area of the lobby. For purposes of this paragraph, "lobby" means the common public area of an establishment in which registration and other similar or related transactions, or both, are conducted and in which the establishment's guests and members of the public typically congregate.

(3) Meeting and banquet rooms in a hotel, motel, other transient lodging establishment similar to a hotel or motel, restaurant, or public convention center, except while food or beverage functions are taking place, including setup, service, and cleanup activities, or when the room is being used for exhibit purposes. At times when smoking is not permitted in a meeting or banquet room pursuant to this paragraph, the establishment may permit smoking in corridors and prefunction areas adjacent to and serving the meeting or

banquet room if no employee is stationed in that corridor or area on other than a passing basis.

(4) Retail or wholesale tobacco shops and private smokers' lounges. For purposes of this paragraph:

(A) "Private smokers' lounge" means any enclosed area in or attached to a retail or wholesale tobacco shop that is dedicated to the use of tobacco products, including, but not limited to, cigars and pipes.

(B) "Retail or wholesale tobacco shop" means any business establishment the main purpose of which is the sale of tobacco products, including, but not limited to, cigars, pipe tobacco, and smoking accessories.

(5) Cabs of motortrucks, as defined in Section 410 of the Vehicle Code, or truck tractors, as defined in Section 655 of the Vehicle Code, if no nonsmoking employees are present.

(6) Warehouse facilities. For purposes of this paragraph, "warehouse facility" means a warehouse facility with more than 100,000 square feet of total floor space, and 20 or fewer full-time employees working at the facility, but does not include any area within a facility that is utilized as office space.

(7) Gaming clubs, in which smoking is permitted by subdivision (f). For purposes of this paragraph, "gaming club" means any gaming club, as defined in Section 19802 of the Business and Professions Code, or bingo facility, as defined in Section 326.5 of the Penal Code, that restricts access to minors under 18 years of age.

(8) Bars and taverns, in which smoking is permitted by subdivision (f). For purposes of this paragraph, "bar" or "tavern" means a facility primarily devoted to the serving of alcoholic beverages for consumption by guests on the premises, in which the serving of food is incidental. "Bar or tavern" includes those facilities located within a hotel, motel, or other similar transient occupancy establishment. However, when located within a building in conjunction with another use, including a restaurant, "bar" or "tavern" includes only those areas used primarily for the sale and service of alcoholic beverages. "Bar" or "tavern" does not include the dining areas of a restaurant, regardless of whether alcoholic beverages are served therein.

(9) Theatrical production sites, if smoking is an integral part of the story in the theatrical production.

(10) Medical research or treatment sites, if smoking is integral to the research and treatment being conducted.

(11) Private residences, except for private residences licensed as family day care homes, during the hours of operation as family day care homes and in those areas where children are present.

(12) Patient smoking areas in long-term health care facilities, as defined in Section 1418 of the Health and Safety Code.

(13) Breakrooms designated by employers for smoking, provided that all of the following conditions are met:

(A) Air from the smoking room shall be exhausted directly to the outside by an exhaust fan. Air from the smoking room shall not be recirculated to other parts of the building.

(B) The employer shall comply with any ventilation standard or other standard utilizing appropriate technology, including, but not limited to, mechanical, electronic, and biotechnical systems, adopted by the Occupational Safety and Health Standards Board or the federal Environmental Protection Agency. If both adopt inconsistent standards, the ventilation standards of the Occupational Safety and Health Standards Board shall be no less stringent than the standards adopted by the federal Environmental Protection Agency.

(C) The smoking room shall be located in a nonwork area where no one, as part of his or her work responsibilities, is required to enter. For purposes of this paragraph, "work responsibilities" does not include any custodial or maintenance work carried out in the breakroom when it is unoccupied.

(D) There are sufficient nonsmoking breakrooms to accommodate nonsmokers.

(14) Employers with a total of five or fewer employees, either full-time or part-time, may permit smoking where all of the following conditions are met:

(A) The smoking area is not accessible to minors.

(B) All employees who enter the smoking area consent to permit smoking. No one, as part of his or her work responsibilities, shall be required to work in an area where smoking is permitted. An employer who is determined by the division to have used coercion to obtain consent or who has required an employee to work in the smoking area shall be subject to the penalty provisions of Section 6427.

(C) Air from the smoking area shall be exhausted directly to the outside by an exhaust fan. Air from the smoking area shall not be recirculated to other parts of the building.

(D) The employer shall comply with any ventilation standard or other standard utilizing appropriate technology, including, but not limited to, mechanical, electronic, and biotechnical systems, adopted by the Occupational Safety and Health Standards Board or the federal Environmental Protection Agency. If both adopt inconsistent standards, the ventilation standards of the Occupational Safety and Health Standards Board shall be no less stringent than the standards adopted by the federal Environmental Protection Agency.

This paragraph shall not be construed to (i) supersede or render inapplicable any condition or limitation on smoking areas made applicable to specific types of business establishments by any other paragraph of this subdivision or (ii) apply in lieu of any otherwise applicable paragraph of this subdivision that has become inoperative.

(e) Paragraphs (13) and (14) of subdivision (d) shall not be construed to require employers to provide reasonable

accommodation to smokers, or to provide breakrooms for smokers or nonsmokers.

(f) (1) Except as otherwise provided in this subdivision, smoking may be permitted in gaming clubs, as defined in paragraph (7) of subdivision (d), and in bars and taverns, as defined in paragraph (8) of subdivision (d), until the earlier of the following:

(A) January 1, 1998.

(B) The date of adoption of a regulation (i) by the Occupational Safety and Health Standards Board reducing the permissible employee exposure level to environmental tobacco smoke to a level that will prevent anything other than insignificantly harmful effects to exposed employees or (ii) by the federal Environmental Protection Agency establishing a standard for reduction of permissible exposure to environmental tobacco smoke to an exposure level that will prevent anything other than insignificantly harmful effects to exposed persons.

(2) If a regulation specified in subparagraph (B) of paragraph (1) is adopted on or before January 1, 1998, smoking may thereafter be permitted in gaming clubs and in bars and taverns, subject to full compliance with, or conformity to, the standard in the regulation within two years following the date of adoption of the regulation. An employer failing to achieve compliance with, or conformity to, the regulation within this two-year period shall prohibit smoking in the gaming club, bar, or tavern until compliance or conformity is achieved. If the Occupational Safety and Health Standards Board and the federal Environmental Protection Agency both adopt regulations specified in subparagraph (B) of paragraph (1) that are inconsistent, the regulations of the Occupational Safety Standards Board shall be no less stringent than the regulations of the federal Environmental Protection Agency.

(3) If a regulation specified in subparagraph (B) of paragraph (1) is not adopted on or before January 1, 1998, the exemptions specified in paragraphs (7) and (8) of subdivision (d) shall be inoperative on and after January 1, 1998, until a regulation is adopted. Upon adoption of such a regulation on or after January 1, 1998, smoking may thereafter be permitted in gaming clubs and in bars and taverns, subject to full compliance with, or conformity to, the standard in the regulation within two years following the date of adoption of the regulation. An employer failing to achieve compliance with, or conformity to, the regulation within this two-year period shall prohibit smoking in the gaming club, bar, or tavern until compliance or conformity is achieved. If the Occupational Safety and Health Standards Board and the federal Environmental Protection Agency both adopt regulations specified in subparagraph (B) of paragraph (1) that are inconsistent, the regulations of the Occupational Safety and Health Standards Board shall be no less stringent than the regulations of the federal Environmental Protection Agency.

(4) From January 1, 1997, to December 31, 1997, inclusive, smoking may be permitted in gaming clubs, as defined in paragraph (7) of subdivision (d), and in bars and taverns, as defined in paragraph (8) of subdivision (d), subject to both of the following conditions:

(A) If practicable, the gaming club or bar or tavern shall establish a designated nonsmoking area.

(B) If feasible, no employee shall be required, in the performance of ordinary work responsibilities, to enter any area in which smoking is permitted.

(g) The smoking prohibition set forth in this section shall constitute a uniform statewide standard for regulating the smoking of tobacco products in enclosed places of employment and shall supersede and render unnecessary the local enactment or enforcement of local ordinances regulating the smoking of tobacco products in enclosed places of employment. Insofar as the smoking prohibition set forth in this section is applicable to all (100 percent of) places of employment within this state and, therefore, provides the maximum degree of coverage, the practical effect of this section is to eliminate the need of local governments to enact enclosed workplace smoking restrictions within their respective jurisdictions.

(h) Nothing in this section shall prohibit an employer from prohibiting smoking in an enclosed place of employment for any reason.

(i) The enactment of local regulation of smoking of tobacco products in enclosed places of employment by local governments shall be suspended only for as long as, and to the extent that, the (100 percent) smoking prohibition provided for in this section remains in effect. In the event this section is repealed or modified by subsequent legislative or judicial action so that the (100 percent) smoking prohibition is no longer applicable to all enclosed places of employment in California, local governments shall have the full right and authority to enforce previously enacted, and to enact and enforce new, restrictions on the smoking of tobacco products in enclosed places of employment within their jurisdictions, including a complete prohibition of smoking. Notwithstanding any other provision of this section, any area not defined as a "place of employment" or in which the smoking is not regulated pursuant to subdivision (d) or (e), shall be subject to local regulation of smoking of tobacco products.

(j) Any violation of the prohibition set forth in subdivision (b) is an infraction, punishable by a fine not to exceed one hundred dollars ($100) for a first violation, two hundred dollars ($200) for a second violation within one year, and five hundred dollars ($500) for a third and for each subsequent violation within one year. This subdivision shall be enforced by local law enforcement agencies including, but not limited to, local health departments, as determined by the local governing body.

(k) Notwithstanding Section 6309, the division shall not be required to respond to any complaint regarding the smoking of tobacco products in an enclosed space at a place of employment, unless the employer has been found guilty pursuant to subdivision (j) of a third violation of subdivision (b) within the previous year.

(*l*) If any provision of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision of application, and to this end the provisions of this act are severable.

SEC. 6. Section 76 of the Penal Code is amended to read:

76. (a) Every person who knowingly and willingly threatens the life of, or threatens serious bodily harm to, any elected public official, county public defender, county clerk, exempt appointee of the Governor, judge, or Deputy Commissioner of the Board of Prison Terms, or the staff or immediate family of any elected public official, county public defender, county clerk, exempt appointee of the Governor, judge, or Deputy Commissioner of the Board of Prison Terms, with the specific intent that the statement is to be taken as a threat, and the apparent ability to carry out that threat by any means, is guilty of a public offense, punishable as follows:

(1) Upon a first conviction, the offense is punishable by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the state prison, or in a county jail not exceeding one year, or by both that fine and imprisonment.

(2) If the person has been convicted previously of violating this section, the previous conviction shall be charged in the accusatory pleading, and if the previous conviction is found to be true by the jury upon a jury trial, or by the court upon a court trial, or is admitted by the defendant, the offense is punishable by imprisonment in the state prison.

(b) (1) Any law enforcement agency which has knowledge of a violation of this section shall immediately report that information to the California Department of Justice.

(2) In addition to the reporting requirement imposed by paragraph (1), if a violation of this section occurs that involves a constitutional officer of the state, a Member of the Legislature, or a member of the judiciary, the law enforcement agency which has knowledge of the violation shall immediately report that information to the Department of the California Highway Patrol.

(c) For purposes of this section, the following definitions shall apply:

(1) "Apparent ability to carry out that threat" includes the ability to fulfill the threat at some future date when the person making the threat is an incarcerated prisoner with a stated release date.

(2) "Serious bodily harm" includes serious physical injury or serious traumatic condition.

(3) "Immediate family" means a spouse, parent, or child, or anyone who has regularly resided in the household for the past six months.

(4) "Staff of a judge" means court officers and employees, including commissioners, referees, and retired judges sitting on assignment.

(5) "Threat" means a verbal or written threat or a threat implied by a pattern of conduct or a combination of verbal or written statements and conduct made with the intent and the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family.

(d) As for threats against staff, the threat must relate directly to the official duties of the staff of the elected public official, county public defender, county clerk, exempt appointee of the Governor, judge, or Deputy Commissioner of the Board of Prison Terms in order to constitute a public offense under this section.

(e) A threat must relate directly to the official duties of a Deputy Commissioner of the Board of Prison Terms in order to constitute a public offense under this section.

SEC. 7. Section 148.10 of the Penal Code is amended to read:

148.10. (a) Every person who willfully resists a peace officer in the discharge or attempt to discharge any duty of his or her office or employment and the willful resistance of the person proximately causes death or serious bodily injury to a peace officer, shall be punished by imprisonment in the state prison for two, three, or four years, or a fine of not less than one thousand dollars ($1,000) or more than ten thousand dollars ($10,000), or both the fine and imprisonment, or by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars ($1,000), or by both the fine and imprisonment.

(b) For purposes of subdivision (a), the following facts shall be found by the trier of fact:

(1) That the peace officer's action was reasonable based on the facts or circumstances confronting the officer at the time.

(2) That the detention and arrest was lawful and there existed probable cause or reasonable cause to detain.

(3) That the person who willfully resisted, any peace officer knew or reasonably should have known that the other person was a peace officer engaged in the performance of his or her duties.

(c) This section shall not apply to conduct which occurs during labor picketing, demonstrations, or disturbing the peace.

(d) For purposes of this section, "serious bodily injury" is defined in paragraph (4) of subdivision (f) of Section 243.

SEC. 8. Section 831.5 of the Penal Code is amended to read:

831.5. (a) As used in this section, a custodial officer is a public officer, not a peace officer, employed by a law enforcement agency of San Diego County, Fresno County, Kern County, Stanislaus

County, Riverside County, or a county having a population of 425,000 or less who has the authority and responsibility for maintaining custody of prisoners and performs tasks related to the operation of a local detention facility used for the detention of persons usually pending arraignment or upon court order either for their own safekeeping or for the specific purpose of serving a sentence therein. Custodial officers of a county shall be employees of, and under the authority of, the sheriff, except in counties in which the sheriff, as of July 1, 1993, is not in charge of and the sole and exclusive authority to keep the county jail and the prisoners in it. A custodial officer includes a person designated as a correctional officer, jailer, or other similar title. The duties of a custodial officer may include the serving of warrants, court orders, writs, and subpoenas in the detention facility or under circumstances arising directly out of maintaining custody of prisoners and related tasks. In counties having a population of 100,000 or less, a custodial officer may be assigned by the sheriff as a court bailiff on an interim basis, and, when under the direction of the sheriff, a custodial officer assigned as a court bailiff may carry or possess firearms.

(b) Notwithstanding any other provision of law, during a state of emergency as defined in Section 8558 of the Government Code, a custodial officer may be assigned limited law enforcement responsibilities under the supervision of a peace officer. While on this assignment, the custodial officer may exercise the powers of arrest pursuant to Section 836.5.

(c) A custodial officer has no right to carry or possess firearms in the performance of his or her prescribed duties, except, under the direction of the sheriff or chief of police, while assigned as a court bailiff or engaged in transporting prisoners, guarding hospitalized prisoners, or suppressing jail riots, lynchings, escapes, or rescues in or about a detention facility falling under the care and custody of the sheriff or chief of police.

(d) Each person described in this section as a custodial officer shall, within 90 days following the date of the initial assignment to that position, satisfactorily complete the training course specified in Section 832. In addition, each person designated as a custodial officer shall, within one year following the date of the initial assignment as a custodial officer, have satisfactorily met the minimum selection and training standards prescribed by the Board of Corrections pursuant to Section 6035. Persons designated as custodial officers, before the expiration of the 90-day and one-year periods described in this subdivision, who have not yet completed the required training, shall not carry or possess firearms in the performance of their prescribed duties, but may perform the duties of a custodial officer only while under the direct supervision of a peace officer, as described in Section 830.1, who has completed the training prescribed by the Commission on Peace Officer Standards and Training, or a custodial officer who has completed the training required in this section.

(e) At any time 20 or more custodial officers are on duty, there shall be at least one peace officer, as described in Section 830.1, on duty at the same time to supervise the performance of the custodial officers.

(f) This section shall not be construed to confer any authority upon any custodial officer except while on duty.

(g) A custodial officer may use reasonable force in establishing and maintaining custody of persons delivered to him or her by a law enforcement officer, may make arrests for misdemeanors and felonies within the local detention facility pursuant to a duly issued warrant, may make warrantless arrests pursuant to Section 836.5 only during the duration of his or her job, may release without further criminal process persons arrested for intoxication, and may release misdemeanants on citation to appear in lieu of or after booking.

(h) 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. 8.5. Section 831.5 is added to the Penal Code, to read:

831.5. (a) As used in this section, a custodial officer is a public officer, not a peace officer, employed by a law enforcement agency of San Diego County, Fresno County, Kern County, Stanislaus County, Riverside County, or a county having a population of 425,000 or less who has the authority and responsibility for maintaining custody of prisoners and performs tasks related to the operation of a local detention facility used for the detention of persons usually pending arraignment or upon court order either for their own safekeeping or for the specific purpose of serving a sentence therein. Custodial officers of a county shall be employees of, and under the authority of, the sheriff, except in counties in which the sheriff, as of July 1, 1993, is not in charge of and the sole and exclusive authority to keep the county jail and the prisoners in it. A custodial officer includes a person designated as a correctional officer, jailer, or other similar title. The duties of a custodial officer may include the serving of warrants, court orders, writs, and subpoenas in the detention facility or under circumstances arising directly out of maintaining custody of prisoners and related tasks.

(b) A custodial officer has no right to carry or possess firearms in the performance of his or her prescribed duties, except, under the direction of the sheriff or chief of police, while engaged in transporting prisoners; guarding hospitalized prisoners; or suppressing jail riots, lynchings, escapes, or rescues in or about a detention facility falling under the care and custody of the sheriff or chief of police.

(c) Each person described in this section as a custodial officer shall, within 90 days following the date of the initial assignment to that position, satisfactorily complete the training course specified in Section 832. In addition, each person designated as a custodial officer shall, within one year following the date of the initial assignment as

a custodial officer, have satisfactorily met the minimum selection and training standards prescribed by the Board of Corrections pursuant to Section 6035. Persons designated as custodial officers, before the expiration of the 90-day and one-year periods described in this subdivision, who have not yet completed the required training, shall not carry or possess firearms in the performance of their prescribed duties, but may perform the duties of a custodial officer only while under the direct supervision of a peace officer, as described in Section 830.1, who has completed the training prescribed by the Commission on Peace Officer Standards and Training, or a custodial officer who has completed the training required in this section.

(d) At any time 20 or more custodial officers are on duty, there shall be at least one peace officer, as described in Section 830.1, on duty at the same time to supervise the performance of the custodial officers.

(e) This section shall not be construed to confer any authority upon any custodial officer except while on duty.

(f) A custodial officer may use reasonable force in establishing and maintaining custody of persons delivered to him or her by a law enforcement officer; may make arrests for misdemeanors and felonies within the local detention facility pursuant to a duly issued warrant; may make warrantless arrests pursuant to Section 836.5 only during the duration of his or her job; may release without further criminal process persons arrested for intoxication; and may release misdemeanants on citation to appear in lieu of or after booking.

(g) This section shall become operative on January 1, 2003.

SEC. 9. 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:

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

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

(b) The Attorney General shall furnish state summary criminal history information to any of the following, if needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or

licensing duties, Chapter 1321 of the Statutes of 1974 and of Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state as defined in Section 830.1, subdivisions (a) and (e) 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. 10. Section 11105.2 of the Penal Code is amended to read:

11105.2. (a) The Department of Justice may provide subsequent arrest notification to any agency authorized by Section 11105 to receive state summary criminal history information to assist in fulfilling employment, licensing, or certification duties upon the arrest of any person whose fingerprints are maintained on file at the Department of Justice as the result of an application for licensing, employment, or certification. The notification shall consist of a current copy of the person's state summary criminal history transcript.

(b) Any agency, other than a law enforcement agency employing peace officers as defined in Section 830.1, subdivisions (a) and (e) 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, shall enter into a contract with the Department of Justice in order to receive notification of subsequent arrests for licensing, employment, or certification purposes.

(c) Any agency which submits the fingerprints of applicants for licensing, employment, or certification to the Department of Justice for the purpose of establishing a record of the applicant to receive notification of subsequent arrests shall immediately notify the department when the employment of the applicant is terminated, when the applicant's license or certificate is revoked, or when the applicant may no longer renew or reinstate the license or certificate. The Department of Justice shall terminate subsequent arrest notification on any applicant upon the request of the licensing, employment, or certifying authority.

(d) Any agency receiving a notification of subsequent arrest for a person unknown to the agency, or for a person no longer employed by the agency, or no longer eligible to renew the certificate or license for which subsequent arrest notification service was established shall immediately return the subsequent arrest notification to the Department of Justice, informing the department that the agency is no longer interested in the applicant. The agency shall not record or otherwise retain any information received as a result of the subsequent arrest notice.

(e) Any agency which submits the fingerprints of an applicant for employment, licensing, or certification to the Department of Justice for the purpose of establishing a record at the department to receive notification of subsequent arrest shall immediately notify the department if the applicant is not subsequently employed, or if the applicant is denied licensing or certification.

(f) An agency which fails to provide the Department of Justice with notification as set forth in subdivisions (c), (d), and (e) may be denied further subsequent arrest notification service.

(g) Notwithstanding subdivisions (c), (d), and (f), subsequent arrest notification by the Department of Justice and retention by the employing agency shall continue as to retired peace officers listed in subdivision (c) of Section 830.5.

SEC. 11. Section 12028.5 of the Penal Code is amended to read:

12028.5. (a) As used in this section, the following definitions shall apply:

(1) "Abuse" means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself, herself, or another.

(2) "Family violence" has the same meaning as domestic violence as defined in subdivision (b) of Section 13700, and also includes any abuse perpetrated against a family or household member.

(3) "Family or household member" means a spouse, former spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any person who regularly resides or who regularly resided in the household.

The presumption applies that the male parent is the father of any child of the female pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code).

(4) "Deadly weapon" means any weapon, the possession or concealed carrying of which is prohibited by Section 12020.

(b) A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police officer of a city, as defined in subdivision (a) of Section 830.1, a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, a member of the University of California Police Department, as defined in subdivision (b) of Section 830.2, an officer listed in Section 830.6 while acting in the course and scope of his or her employment as a peace officer, a member of a California State University Police Department, as defined in subdivision (c) of Section 830.2, a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, a peace officer, as defined in subdivision (d) of Section 830.31, and a peace officer, as defined in Section 830.5, who is at the scene of a family violence incident involving a threat to human life or a physical assault, may take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual search as necessary for the protection of the peace officer or other persons present. Upon taking custody of a firearm or other deadly weapon, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm or other deadly weapon and list any identification or serial number on the firearm. The receipt shall indicate where the firearm or other deadly weapon can be recovered and the date after which the owner or possessor can recover the firearm or other deadly weapon. No firearm or other deadly weapon shall be held less than 48 hours. Except as provided in subdivision (e), if a firearm or other deadly weapon is not retained for use as evidence related to criminal charges brought as a result of the family violence incident or is not retained because it was illegally possessed, the firearm or other deadly weapon shall be made available to the owner or person who was in lawful possession 48 hours after the seizure or as soon thereafter as possible, but no later than 72 hours after the seizure. In any civil action or proceeding for the return of firearms or ammunition or other deadly weapon seized by any state or local law enforcement agency and not returned within 72 hours following the initial seizure, except as provided in subdivision (c), the court shall allow reasonable attorney's fees to the prevailing party.

(c) Any firearm or other deadly weapon which has been taken into custody that has been stolen shall be restored to the lawful owner, as soon as its use for evidence has been served, upon his or her identification of the firearm or other deadly weapon and proof of ownership.

(d) Any firearm or other deadly weapon taken into custody and held by a police, university police, or sheriff's department or by a marshal's office, by a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, by a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, by a peace officer, as defined in subdivision (d) of Section 830.31, or by a peace officer, as defined in Section 830.5, for longer than 12 months and not recovered by the owner or person who has lawful possession at the time it was taken into custody, shall be considered a nuisance and sold or destroyed as provided in subdivision (c) of Section 12028. Firearms or other deadly weapons not recovered within 12 months due to an extended hearing process as provided in subdivision (i), are not subject to destruction until the court issues a decision, and then only if the court does not order the return of the firearm or other deadly weapon to the owner.

(e) In those cases where a law enforcement agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, the agency shall advise the owner of the firearm or other deadly weapon, and within 10 days of the seizure, initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned.

(f) The law enforcement agency shall inform the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. For the purposes of this subdivision, the person's last known address shall be presumed to be the address provided to the law enforcement officer by that person at the time of the family violence incident. In the event the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the agency, the agency shall make a diligent, good faith effort to learn the whereabouts of the person and to comply with these notification requirements.

(g) If the person requests a hearing, the court clerk shall set a hearing no later than 30 days from receipt of that request. The court clerk shall notify the person, the law enforcement agency involved, and the district attorney of the date, time, and place of the hearing. Unless it is shown by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering

the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party.

(h) If the person does not request a hearing or does not otherwise respond within 30 days of the receipt of the notice, the law enforcement agency may file a petition for an order of default and may dispose of the firearm or other deadly weapon as provided in Section 12028.

(i) If, at the hearing, the court does not order the return of the firearm or other deadly weapon to the owner or person who had lawful possession, that person may petition the court for a second hearing within 12 months from the date of the initial hearing. If the owner or person who had lawful possession does not petition the court within this 12-month period for a second hearing or is unsuccessful at the second hearing in gaining return of the firearm or other deadly weapon, the firearm or other deadly weapon may be disposed of as provided in Section 12028.

(j) The law enforcement agency, or the individual law enforcement officer, shall not be liable for any act in the good faith exercise of this section.

SEC. 12. Section 13300 of the Penal Code is amended to read:

13300. (a) As used in this section:

(1) "Local summary criminal history information" means the master record of information compiled by any local criminal justice agency pursuant to Chapter 2 (commencing with Section 13100) of Title 3 of Part 4 pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, dates of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person.

(2) "Local summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than that local agency, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the local agency.

(3) "Local agency" means a local criminal justice agency.

(b) A local agency shall furnish local summary criminal history information to any of the following, when 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 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) and (d) of Section 830.2, subdivisions (a), (b), and (j) of Section 830.3, and subdivisions (a), (b), and (c) of Section 830.5.

(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 when authorized access by statutory or decisional law.

(9) Any agency, officer, or official of the state when the local summary criminal history information is required to implement a statute, regulation, or ordinance that expressly refers to specific criminal conduct applicable to the subject person of the local summary criminal history information, and contains requirements or exclusions, or both, expressly based upon the specified criminal conduct.

(10) Any city, county, city and county, or district, or any officer or official thereof, when access is needed in order to assist the agency, officer, or official in fulfilling employment, certification, or licensing duties, and when the access is specifically authorized by the city council, board of supervisors, or governing board of the city, county, or district when the local summary criminal history information is required to implement a statute, regulation, or ordinance that expressly refers to specific criminal conduct applicable to the subject person of the local summary criminal history information, and contains requirements or exclusions, or both, expressly based upon the specified criminal conduct.

(11) The subject of the local summary criminal history information.

(12) Any person or entity when access is expressly authorized by statute when the local summary criminal history information is required to implement a statute, regulation, or ordinance that expressly refers to specific criminal conduct applicable to the subject person of the local summary criminal history information, and contains requirements or exclusions, or both, expressly based upon the specified criminal conduct.

(13) Any managing or supervising correctional officer of a county jail or other county correctional facility.

(c) The local agency may furnish local 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 Section 432.7 of the Labor Code shall apply:

(1) Any public utility, as defined in Section 216 of the Public Utilities Code, which operates a nuclear energy facility when access is needed to assist in employing persons to work at the facility, provided that, if the local agency supplies the information, it shall

furnish a copy of this information to the person to whom the information 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 local summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States when this 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 local 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 when 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, when access is needed to assist in employing persons who will be seeking entrance to private residences in the course of their employment. 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 local agency supplies the information pursuant to this paragraph, it shall furnish a copy of the information to the person to whom the information relates.

Any information obtained from the local 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 local summary criminal history information in the possession of the public utility and all copies made from it shall be destroyed 30 days after employment is denied or granted, including any appeal periods, except for those cases where an employee or applicant 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 30 days after the case is resolved, including any appeal periods.

A violation of any of the provisions of this paragraph is a misdemeanor, and shall give the employee or applicant who is injured by the violation a cause of action against the public utility to recover damages proximately caused by the violation.

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

Seeking entrance to private residences in the course of employment shall be deemed a "compelling need" as required to be shown in this subdivision.

(10) Any city, county, city and county, or district, or any officer or official thereof, if a written request is made to a local law enforcement agency and the information is needed to assist in the screening of a prospective concessionaire, and any affiliate or associate thereof, as these terms are defined in subdivision (k) of Section 432.7 of the Labor Code, for the purposes of consenting to, or approving of, the prospective concessionaire's application for, or acquisition of, any beneficial interest in a concession, lease, or other property interest.

Any local government's request for local summary criminal history information for purposes of screening a prospective concessionaire and their affiliates or associates before approving or denying an application for, or acquisition of, any beneficial interest in a concession, lease, or other property interest is deemed a "compelling need" as required by this subdivision. However, only local summary criminal history information pertaining to criminal convictions may be obtained pursuant to this paragraph.

Any information obtained from the local summary criminal history is confidential and the receiving local government shall not disclose its contents, other than for the purpose for which it was acquired. The local summary criminal history information in the possession of the local government and all copies made from it shall be destroyed not more than 30 days after the local government's final decision to grant or deny consent to, or approval of, the prospective concessionaire's application for, or acquisition of, a beneficial interest in a concession, lease, or other property interest. Nothing in this section shall be construed as imposing any duty upon a local government, or any officer or official thereof, to request local summary criminal history information on any current or prospective concessionaire or their affiliates or associates.

(d) Whenever an authorized request for local summary criminal history information pertains to a person whose fingerprints are on file with the local agency and the local agency 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) A local agency taking fingerprints of a person who is an applicant for licensing, employment, or certification may charge a fee not to exceed ten dollars ($10) to cover the cost of taking the fingerprints and processing the required documents.

(f) Whenever local summary criminal history information furnished pursuant to this section is to be used for employment, licensing, or certification purposes, the local agency shall charge the person or entity making the request a fee which it determines to be sufficient to reimburse the local agency for the cost of furnishing the information, provided that no fee shall be charged to any public law enforcement agency for local summary criminal history information furnished to assist it in employing, licensing, or certifying a person who is applying for employment with the agency as a peace officer or criminal investigator. Any state agency required to pay a fee to the local agency for information received under this section may charge the applicant a fee sufficient to reimburse the agency for the expense.

(g) Whenever there is a conflict, the processing of criminal fingerprints shall take priority over the processing of applicant fingerprints.

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

(i) It is not a violation of this article 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 when the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(j) 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 record checks which are authorized by law.

(k) Any local criminal justice agency may release, within five years of the arrest, information concerning an arrest or detention of a peace officer or applicant for a position as a peace officer, as defined in Section 830, which did not result in conviction, and for which the person did not complete a postarrest diversion program or a deferred entry of judgment program, to a government agency employer of that peace officer or applicant.

(*l*) Any local criminal justice agency may release information concerning an arrest of a peace officer or applicant for a position as a peace officer, as defined in Section 830, which did not result in conviction but for which the person completed a postarrest diversion program or a deferred entry of judgment program, or information concerning a referral to and participation in any postarrest diversion program or a deferred entry of judgment program to a government agency employer of that peace officer or applicant.

(m) Notwithstanding subdivision (k) or (*l*), a local criminal justice agency shall not release information under the following circumstances:

(1) Information concerning an arrest for which diversion or a deferred entry of judgment program has been ordered without

attempting to determine whether diversion or a deferred entry of judgment program has been successfully completed.

(2) Information concerning an arrest or detention followed by a dismissal or release without attempting to determine whether the individual was exonerated.

(3) Information concerning an arrest without a disposition without attempting to determine whether diversion has been successfully completed or the individual was exonerated.

SEC. 13. Section 13519 of the Penal Code is amended to read:

13519. (a) The commission shall implement by January 1, 1986, a course or courses of instruction for the training of law enforcement officers in California in the handling of domestic violence complaints and also shall develop guidelines for law enforcement response to domestic violence. The course or courses of instruction and the guidelines shall stress enforcement of criminal laws in domestic violence situations, availability of civil remedies and community resources, and protection of the victim. Where appropriate, the training presenters shall include domestic violence experts with expertise in the delivery of direct services to victims of domestic violence, including utilizing the staff of shelters for battered women in the presentation of training.

As used in this section, "law enforcement officer" means any officer or employee of a local police department or sheriff's office, any peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, any peace officer of the University of California Police Department, as defined in subdivision (b) of Section 830.2, any peace officer of the California State University Police Departments, as defined in subdivision (c) of Section 830.2, or a peace officer, as defined in subdivision (d) of Section 830.31.

(b) The course of basic training for law enforcement officers shall, no later than January 1, 1986, include adequate instruction in the procedures and techniques described below:

(1) The provisions set forth in Title 5 (commencing with Section 13700) relating to response, enforcement of court orders, and data collection.

(2) The legal duties imposed on police officers to make arrests and offer protection and assistance including guidelines for making felony and misdemeanor arrests.

(3) Techniques for handling incidents of domestic violence that minimize the likelihood of injury to the officer and that promote the safety of the victim.

(4) The nature and extent of domestic violence.

(5) The legal rights of, and remedies available to, victims of domestic violence.

(6) The use of an arrest by a private person in a domestic violence situation.

(7) Documentation, report writing, and evidence collection.

(8) Domestic violence diversion as provided in Chapter 2.6 (commencing with Section 1000.6) of Title 6 of Part 2.

(9) Tenancy issues and domestic violence.

(10) The impact on children of law enforcement intervention in domestic violence.

(11) The services and facilities available to victims and batterers.

(12) The use and applications of this code in domestic violence situations.

(13) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.

(14) Verification and enforcement of stay-away orders.

(15) Cite and release policies.

(16) Emergency assistance to victims and how to assist victims in pursuing criminal justice options.

The guidelines developed by the commission shall also incorporate the foregoing factors.

(c) (1) All law enforcement officers who have received their basic training before January 1, 1986, shall participate in supplementary training on domestic violence subjects, as prescribed and certified by the commission.

(2) Except as provided in paragraph (3), the training specified in paragraph (1) shall be completed no later than January 1, 1989.

(3) (A) The training for peace officers of the Department of Parks and Recreation, as defined in subdivision (g) of Section 830.2, shall be completed no later than January 1, 1992.

(B) The training for peace officers of the University of California Police Department and the California State University Police Departments, as defined in Section 830.2, shall be completed no later than January 1, 1993.

(C) The training for peace officers employed by a housing authority, as defined in subdivision (d) of Section 830.31, shall be completed no later than January 1, 1995.

(4) Local law enforcement agencies are encouraged to include, as a part of their advanced officer training program, periodic updates and training on domestic violence. The commission shall assist where possible.

(d) The course of instruction, the learning and performance objectives, the standards for the training, and the guidelines shall be developed by the commission in consultation with appropriate groups and individuals having an interest and expertise in the field of domestic violence. The groups and individuals shall include, but shall not be limited to, the following: one representative each from the California Peace Officers' Association, the Peace Officers' Research Association of California, the State Bar of California, the California Women Lawyers' Association, and the State Commission on the Status of Women; two representatives from the commission; two representatives from the California Alliance Against Domestic Violence; two peace officers, recommended by the commission, who

are experienced in the provision of domestic violence training; and two domestic violence experts, recommended by the California Alliance Against Domestic Violence, who are experienced in the provision of direct services to victims of domestic violence. At least one of the persons selected shall be a former victim of domestic violence.

The commission, in consultation with these groups and individuals, shall review existing training programs to determine in what ways domestic violence training might be included as a part of ongoing programs.

(e) Each law enforcement officer below the rank of supervisor who is assigned to patrol duties and would normally respond to domestic violence calls or incidents of domestic violence shall complete, every two years, an updated course of instruction on domestic violence that is developed according to the standards and guidelines developed pursuant to subdivision (d). The instruction required pursuant to this subdivision shall be funded from existing resources available for the training required pursuant to this section. It is the intent of the Legislature not to increase the annual training costs of local government entities.

SEC. 14. Section 1807.5 of the Vehicle Code is amended to read:

1807.5. (a) Notwithstanding Section 1808, any record of the department of a conviction of Section 23103 as specified in Section 23103.5, or of a conviction of Section 23152 or 23153 which occurred before January 1, 1987, is not a public record on and after a date which is five years after the date of conviction of that offense, and the department shall, thereafter, make any information relating to that conviction available only to persons authorized by law to receive the information.

(b) For the purposes of this section, "persons authorized by law to receive the information" means any of the following:

(1) The courts of the state.

(2) Peace officers, as defined in Section 830.1 of the Penal Code; subdivision (a) of Section 830.2 of the Penal Code; subdivisions (a), (b), and (j) of Section 830.3 of the Penal Code; and subdivisions (a), (b), and (c) of Section 830.5 of the Penal Code.

(3) The Attorney General.

(4) District attorneys of any county within the state.

(5) Prosecuting city attorneys of any city within the state.

(6) Probation officers of any city or county of the state.

(7) Parole officers of any city or county of the state.

SEC. 15. Section 13351.5 of the Vehicle Code is amended to read:

13351.5. (a) Upon receipt of a duly certified abstract of the record of any court showing that a person has been convicted of a felony for a violation of Section 245 of the Penal Code and that a vehicle was found by the court to constitute the deadly weapon or instrument used to commit that offense, the department

immediately shall revoke the privilege of that person to drive a motor vehicle.

(b) The department shall not reinstate a privilege revoked under subdivision (a) under any circumstances.

(c) Notwithstanding subdivision (b), the department shall terminate any revocation order issued under this section on or after January 1, 1995, for a misdemeanor conviction of violating Section 245 of the Penal Code.

SEC. 16. It is the intent of the Legislature that the amendments made in Section 8 of this act to Section 831.5 of the Penal Code are for the purpose of permitting sheriffs in counties with populations of 100,000 or less, in which fully trained deputy sheriffs are not available to perform the duties of bailiffs in the courts of those counties, to use custodial officers as bailiffs in those courts, on an interim basis, until such time as fully trained deputy sheriffs are available to perform those duties. This legislation is necessary as a result of the problems experienced by certain counties in recruiting, training, and retaining qualified persons for the position of deputy sheriff.

SEC. 17. Any section of any act enacted by the Legislature during the 1998 calendar year that takes effect on or before January 1, 1999, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act that is enacted by the Legislature during the 1998 calendar year and takes effect on or before January 1, 1999, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

CHAPTER 607

An act to add Section 6527 to the Government Code, relating to joint powers agreement.

[Approved by Governor September 18, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. It is the intent of the Legislature in enacting this act to meet the challenges of the evolving health care market and carry out the essential governmental function of making health care services available to Medi-Cal eligible and medically indigent

citizens served by health care districts, counties, and other public agencies and public corporations.

SEC. 2. Section 6527 is added to the Government Code, to read:

6527. (a) Notwithstanding any other provision of this chapter, where two or more health care districts have joined together to pool their self-insurance claims or losses, a nonprofit corporation which provides health care services that may be carried out by a health care district may participate in the pool, provided that its participation in an existing joint powers agreement, as authorized by this section, shall be permitted only after the public agency members, or public agency representatives on the governing body of the joint powers entity make a finding, at a public meeting, that the agreement provides both of the following:

(1) The primary activities conducted under the joint powers agreement will be substantially related to and in furtherance of the governmental purposes of the public agency.

(2) The public agency participants will maintain control over the activities conducted under the joint powers agreement through public agency control over governance, management, or ownership of the joint powers authority.

(b) Any public agency or private entity entering into a joint powers agreement under this section shall establish or maintain a reserve fund to be used to pay losses incurred under the agreement. The reserve fund shall contain sufficient moneys to maintain the fund on an actuarially sound basis.

(c) In any risk pooling arrangement created under this section, the aggregate payments made under each program shall not exceed the amount available in the pool established for that program.

(d) A public meeting shall be held prior to the dissolution or termination of any enterprise operating under this section to consider the disposition, division, or distribution of any property acquired as a result of exercise of the joint exercise of powers.

(e) Nothing in this section shall be construed to relieve a public benefit corporation that is a health facility from charitable trust obligations, or to exempt such a public benefit corporation from existing law governing joint ventures, or the sale, transfer, lease, exchange, option, conveyance, or other disposition of assets.

(f) Nothing in this section shall be construed to grant any power to any private, nonprofit hospital that participates in an agreement authorized under this section to levy any tax or assessment. Nothing in this section shall permit any entity, other than a private, nonprofit hospital corporation or a public agency, to participate as a party to an agreement authorized under this section.

(g) Nothing in this section shall be construed to permit an agency or entity created pursuant to a joint powers agreement entered into pursuant to this section to act in a manner inconsistent with the laws that apply to public agencies, including, but not limited to, the California Public Records Act (Chapter 3.5 (commencing with

Section 6250)), the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), and the Political Reform Act of 1974 (Title 9 (commencing with Section 81000)).

CHAPTER 608

An act to amend Sections 19809, 19841, 19841A, 19846, 19850, 19850A, 19852.1, and 19855 of the Business and Professions Code, relating to gambling.

[Approved by Governor September 18, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 19809 of the Business and Professions Code is amended to read:

19809. There is within the Department of Justice the Division of Gambling Control as provided in Section 15001 of the Government Code. Except as otherwise provided in this chapter, any power or authority of the division described in this chapter may be exercised by the Attorney General or such other person as the Attorney General may delegate.

SEC. 2. Section 19841 of the Business and Professions Code is amended to read:

19841. (a) An owner of a gambling enterprise that is not a natural person shall not be eligible for a state gambling license unless each of the following persons individually applies for and obtains a state gambling license:

(1) If the owner is a corporation, then each officer, director, and shareholder, other than a holding or intermediary company, of the owner. The foregoing does not apply to an owner that is either a publicly traded racing association or a qualified racing association.

(2) If the owner is a publicly traded racing association, then each officer, director, and owner, other than an institutional investor, of 5 percent or more of the outstanding shares of the publicly traded corporation.

(3) If the owner is a qualified racing association, then each officer, director, and shareholder, other than an institutional investor, of the subsidiary corporation and any owner, other than an institutional investor, of 5 percent or more of the outstanding shares of the publicly traded corporation.

(4) If the owner is a partnership, then every general and limited partner of, and every trustee or person, other than a holding or intermediary company, having or acquiring a direct or beneficial interest in, that partnership owner.

(5) If the owner is a trust, then the trustee and, in the discretion of the division, any beneficiary and the trustor of the trust.

(6) If the owner is a business organization other than a corporation, partnership, or trust, then all those persons as the division may require, consistent with this chapter.

(7) Each person who receives, or is to receive, any percentage share of the revenue earned by the owner from gambling activities.

(8) Every employee, agent, guardian, personal representative, lender, or holder of indebtedness of the owner who, in the judgment of the division, has the power to exercise a significant influence over the gambling operation.

(b) This section shall remain in effect only until the occurrence of one of the events specified in Section 66 of the act that added this chapter, and as of that date is repealed, unless a later enacted statute, which is enacted before the occurrence of one of the events specified in Section 66 of the act that added this chapter, deletes or extends that date.

SEC. 3. Section 19841A of the Business and Professions Code is amended to read:

19841A. (a) An owner of a gambling enterprise that is not a natural person shall not be eligible for a state gambling license unless each of the following persons individually applies for and obtains a state gambling license:

(1) If the owner is a corporation, then each officer, director, and shareholder, other than a holding or intermediary company, of the owner. The foregoing does not apply to an owner that is either a publicly traded racing association or a qualified racing association.

(2) If the owner is a publicly traded racing association, then each officer, director, and owner, other than an institutional investor, of five percent or more of the outstanding shares of the publicly traded corporation.

(3) If the owner is a qualified racing association, then each officer, director, and shareholder, other than an institutional investor, of the subsidiary corporation and any owner, other than an institutional investor, of five percent or more of the outstanding shares of the publicly traded corporation.

(4) If the owner is a partnership, then every general and limited partner of, and every trustee or person, other than a holding or intermediary company, having or acquiring a direct or beneficial interest in, that partnership owner.

(5) If the owner is a trust, then the trustee and, in the discretion of the commission, any beneficiary and the trustor of the trust.

(6) If the owner is a business organization other than a corporation, partnership, or trust, then all those persons as the commission may require, consistent with this chapter.

(7) Each person, other than a landlord, who receives, or is to receive, any percentage share of the revenue earned by the owner from gambling activities.

(8) Every employee, agent, guardian, personal representative, lender, or holder of indebtedness of the owner who, in the judgment of the commission, has the power to exercise a significant influence over the gambling operation.

(b) This section shall become operative on the occurrence of one of the events specified in Section 66 of the act that added this section to the Business and Professions Code.

SEC. 4. Section 19846 of the Business and Professions Code is amended to read:

19846. (a) Except as otherwise provided by statute or regulation, every person who, by statute or regulation, is required to hold a state license shall obtain the license prior to engaging in the activity or occupying the position with respect to which the license is required. Every person who, by order of the division, is required to apply for a gambling license or a finding of suitability shall file the application within 30 calendar days after receipt of the order.

(b) This section shall remain in effect only until the occurrence of one of the events specified in Section 66 of the act that added this chapter, and as of that date is repealed, unless a later enacted statute, which is enacted before the occurrence of one of the events specified in Section 66 of the act that added this chapter, deletes or extends that date.

SEC. 5. Section 19850 of the Business and Professions Code is amended to read:

19850. (a) The division shall deny a license to any applicant who is disqualified for any of the following reasons:

(1) Failure of the applicant to clearly establish eligibility and qualification in accordance with this chapter.

(2) Failure of the applicant to provide information, documentation, and assurances required by this chapter or requested by the director, or failure of the applicant to reveal any fact material to qualification, or the supplying of information that is untrue or misleading as to a material fact pertaining to the qualification criteria.

(3) Conviction of a felony, including a conviction by a federal court or a court in another state for a crime that would constitute a felony if committed in California.

(4) Conviction of the applicant for any misdemeanor involving dishonesty or moral turpitude within the 10-year period immediately preceding the submission of the application, unless the applicant has been granted relief pursuant to Section 1203.4, 1203.4a, or 1203.45 of the Penal Code; provided, however, that the granting of relief pursuant to Section 1203.4, 1203.4a, or 1203.45 of the Penal Code shall not constitute a limitation on the discretion of the division under Section 19847 or affect the applicant's burden under Section 19848.

(5) Association of the applicant with criminal profiteering activity or organized crime, as defined by Section 186.2 of the Penal Code.

(6) Contumacious defiance by the applicant of any legislative investigatory body, or other official investigatory body of any state or of the United States, when that body is engaged in the investigation of crimes relating to gambling; official corruption related to gambling activities; or criminal profiteering activity or organized crime, as defined by Section 186.2 of the Penal Code.

(7) The applicant is less than 21 years of age.

(b) This section shall remain in effect only until the occurrence of one of the events specified in Section 66 of the act that added this chapter, and as of that date is repealed, unless a later enacted statute, which is enacted before the occurrence of one of the events specified in Section 66 of the act that added this chapter, deletes or extends that date.

SEC. 6. Section 19850A of the Business and Professions Code is amended to read:

19850A. (a) The commission shall deny a license to any applicant who is disqualified for any of the following reasons:

(1) Failure of the applicant to clearly establish eligibility and qualification in accordance with this chapter.

(2) Failure of the applicant to provide information, documentation, and assurances required by this chapter or requested by the director, or failure of the applicant to reveal any fact material to qualification, or the supplying of information that is untrue or misleading as to a material fact pertaining to the qualification criteria.

(3) Conviction of a felony, including a conviction by a federal court or a court in another state for a crime that would constitute a felony if committed in California.

(4) Conviction of the applicant for any misdemeanor involving dishonesty or moral turpitude within the 10-year period immediately preceding the submission of the application, unless the applicant has been granted relief pursuant to Section 1203.4, 1203.4a, or 1203.45 of the Penal Code; provided, however, that the granting of relief pursuant to Section 1203.4, 1203.4a, or 1203.45 of the Penal Code shall not constitute a limitation on the discretion of the commission under Section 19847A or affect the applicant's burden under Section 19848A.

(5) Association of the applicant with criminal profiteering activity or organized crime, as defined by Section 186.2 of the Penal Code.

(6) Contumacious defiance by the applicant of any legislative investigatory body, or other official investigatory body of any state or of the United States, when that body is engaged in the investigation of crimes relating to gambling; official corruption related to gambling activities; or criminal profiteering activity or organized crime, as defined by Section 186.2 of the Penal Code.

(7) The applicant is less than 21 years of age.

(b) This section shall become operative on the occurrence of one of the events specified in Section 66 of the act that added this section to the Business and Professions Code.

SEC. 7. Section 19852.1 of the Business and Professions Code is amended to read:

19852.1. A publicly traded racing association or a qualified racing association shall be allowed to operate only one gambling establishment, and the gambling establishment shall be located on the same premises as the entity's racetrack.

SEC. 8. Section 19855 of the Business and Professions Code is amended to read:

19855. (a) An application for a license or a determination of suitability shall be accompanied by the deposit of a sum of money that, in the judgment of the director, will be adequate to pay the anticipated costs and charges incurred in the investigation and processing of the application. The director shall adopt a schedule of costs and charges of investigation for use as guidelines in fixing the amount of any required deposit under this section.

(b) During an investigation, the director may require an applicant to deposit any additional sums as are required by the division to pay final costs and charges of the investigation.

(c) Any money received from an applicant in excess of the costs and charges incurred in the investigation or the processing of the application shall be refunded pursuant to regulations adopted by the division. At the conclusion of the investigation, the director shall provide the applicant a written, itemized accounting of the costs and charges thereby incurred.

CHAPTER 609

An act to amend Sections 7308, 7313, 7314, 7355, 7356, 7506.5, 7651, 7855, 8171, 8172, 8173, 8708, 8957, 9181, 9182, 9183, 9255.1, 30315, 30381, 30383, 32387, 32431, 40155, 41123.5, 43444.2, 43481, 45605, 45751, 46406, 46541, 50136, 51050, 55205, 55261, 60122, 60407, 60561, and 60608 of, and to add Sections 7305.5, 7316, 7652.5, 7983, 30382, 32432, 32433, 43482, 43483, 45752, 45753, 46542, 46543, 50150.1, 50150.2, 55262, 55263, 60562, and 60563 to, to add Article 4 (commencing with Section 40135) to Chapter 5 of Part 19 of, and to add Article 4 (commencing with Section 41114.1) to Chapter 5 of Part 20 of, Division 2 of, and to repeal Section 7356.5 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 18, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 7305.5 is added to the Revenue and Taxation Code, to read:

7305.5. "Redistribution" is the sale, donation, consignment for sale, barter, or use in this state by a licensed distributor or broker of motor vehicle fuel on which the tax in Section 7351 has been imposed based on a prior distribution of the motor vehicle fuel, when the delivery of the fuel is other than into the fuel tank of a motor vehicle.

SEC. 2. Section 7308 of the Revenue and Taxation Code is amended to read:

7308. "Broker" includes every person, other than a distributor, who is engaged in the redistribution of motor vehicle fuel, either as the owner or as the agent of another. "Broker" does not include anyone who is engaged in the redistribution of motor vehicle fuel only: (a) in quantities of less than 200 gallons, (b) as an operator of a service station, (c) as an agent for a distributor in the operation of a bulk plant in the manner described in subdivision (f) of Section 7305.

SEC. 3. Section 7313 of the Revenue and Taxation Code is amended to read:

7313. "Service station" means a place of business where motor vehicle fuel is sold and delivered into the fuel tanks of motor vehicles. Service station includes that portion of a bulk plant that is a cardlock, keylock, or other unattended mechanism.

SEC. 4. Section 7314 of the Revenue and Taxation Code is amended to read:

7314. (a) "Bulk plant" means a place of business where motor vehicle fuel is stored for the purpose of distribution or redistribution of the fuel in bulk.

(b) "Bulk plant" does not include a storage facility from which motor vehicle fuel is solely supplied to a service station by fuel line or lines connected directly with service station dispensing pumps.

SEC. 5. Section 7316 is added to the Revenue and Taxation Code, to read:

7316. "Tax-paid fuel" or "tax paid" means the gallons of motor vehicle fuel acquired on either a temperature corrected or volumetric basis on which the tax in Section 7351 has been imposed at the time of or prior to the acquisition by the distributor or broker.

SEC. 6. Section 7355 of the Revenue and Taxation Code is amended to read:

7355. "Gallon" means the United States gallon of 231 cubic inches, without adjustment of the volumetric gallonage for temperature correction of the fuel distributed or redistributed, except that temperature-corrected gallonage to 60 degrees Fahrenheit as invoiced to the purchaser with settlement made on the same basis will be accepted as the gallonage distributed or redistributed with respect to the following distributions or redistributions:

(a) To a distributor licensed under this part.

(b) To any person when the distribution is exempt from tax as provided in Section 7401.

(c) To any purchaser who uses the fuel exclusively for a purpose other than in motor vehicles operated upon the public highways of this state entitling the purchaser to a refund of the tax.

(d) To the United States government or any agency or instrumentality thereof pursuant to a contract of sale requiring application of temperature correction.

(e) To any person when the quantity distributed or redistributed in any single delivery to a single location is 1,000 or more gallons and temperature correction is consistently applied to all those deliveries to the purchaser over a period of 12 or more consecutive months.

SEC. 7. Section 7356 of the Revenue and Taxation Code is amended to read:

7356. (a) Any distributor or broker who acquires tax-paid motor vehicle fuel from another distributor or broker and who makes a redistribution of the fuel is subject to the tax in Section 7351 with respect to the gallons redistributed which exceed the tax-paid gallons acquired.

(b) The provisions of subdivision (a) do not apply to the sale of tax-paid motor vehicle fuel at a service station.

SEC. 8. Section 7356.5 of the Revenue and Taxation Code is repealed.

SEC. 9. Section 7506.5 of the Revenue and Taxation Code is amended to read:

7506.5. The board may revoke any of the following licenses:

(a) Any distributor's license held by a person who does not engage in, or who discontinues, the distribution of motor vehicle fuel within the meaning of "distribution" as defined in Section 7305.

(b) Any producer's license held by a person who does not engage in, or who discontinues, business as a "producer" as defined in Section 7307.

(c) Any broker's license held by a person who does not engage in, or who discontinues, engaging in the redistribution of motor vehicle fuel as a "broker" as defined in Section 7308.

SEC. 10. Section 7651 of the Revenue and Taxation Code is amended to read:

7651. Each distributor shall prepare and file with the board on forms prescribed by the board a return showing the total number of gallons of motor vehicle fuel distributed or redistributed by the distributor within this state during each calendar month, or that monthly period ended during that calendar month as the board may authorize, the amount of license tax due for the month covered by the return, and other information as the board deems necessary for the proper administration of this part. The distributor shall file the return on or before the 25th day of the calendar month following the monthly period to which it relates, together with a remittance

payable to the Controller for the amount of license tax due for that period less whatever amounts may have been paid theretofore for the same period because of returns and payments made on a weekly basis.

SEC. 11. Section 7652.5 is added to the Revenue and Taxation Code, to read:

7652.5. A distributor or broker who has purchased tax-paid motor vehicle fuel shall be allowed a deduction on the distributor's or broker's tax return with respect to that redistribution of tax-paid fuel reported on the distributor's or broker's tax return.

SEC. 12. Section 7855 of the Revenue and Taxation Code is amended to read:

7855. (a) The Controller may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or personal property belonging to a distributor or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any tax, interest, or penalties due from the distributor or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the Controller at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in Section 9105 of the Commercial Code. The term "payments" does include any of the following:

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

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the distributor or other person liable for the tax.

(3) Any other payments or credits due or becoming due the distributor or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

SEC. 13. Section 7983 is added to the Revenue and Taxation Code, to read:

7983. The board shall not be subject to subdivisions (c) and (d) of Section 16307 of the Corporations Code unless, at the time of application for or issuance of a permit, license, or registration number under this part, the applicant furnishes to the board a written partnership agreement that provides that all business assets shall be held in the name of the partnership.

SEC. 14. Section 8171 of the Revenue and Taxation Code is amended to read:

8171. (a) The Controller may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed, 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.

(b) As an alternative to subdivision (a), the board may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed. In recovering any erroneous refund or credit, the board may, in its discretion, issue a deficiency determination in accordance with Article 2.5 (commencing with Section 7670) or Article 3 (commencing with Section 7698) of Chapter 5. Except in the case of fraud, the deficiency determination shall be made by the board within three years from the date of the Controller's warrant or date of credit.

SEC. 15. Section 8172 of the Revenue and Taxation Code is amended to read:

8172. In any action brought pursuant to subdivision (a) of Section 8171, the court may, with the consent of the Attorney General, order a change in the place of trial.

SEC. 16. Section 8173 of the Revenue and Taxation Code is amended to read:

8173. The Attorney General shall prosecute any action brought pursuant to subdivision (a) of Section 8171, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proofs, trials, and appeals shall apply to the proceedings.

SEC. 17. Section 8708 of the Revenue and Taxation Code is amended to read:

8708. The board or its authorized representative may issue a California fuel trip permit to interstate users for entry into this state. The California fuel trip permit shall be valid for four consecutive days and includes any reentry into the state during the four-day period. The fee for issuance of a California fuel trip permit is thirty dollars ($30). Other provisions of this article and Article 1 (commencing with Section 8751) of Chapter 4 do not apply to the holder of a California fuel trip permit who uses only fuel brought into this state in the fuel tank of a qualified motor vehicle and fuel purchased from, and delivered into the fuel tank of the qualified motor vehicle by, a vendor. Any use fuel tax paid to a vendor for fuel taken out of the state in the fuel tank of a qualified motor vehicle operated under a California fuel trip permit shall not be refunded to the holder of the permit, notwithstanding any other provisions of this part.

The board may enter into an interagency agreement with the Department of Motor Vehicles providing for the issuance of California fuel trip permits by that department.

SEC. 18. Section 8957 of the Revenue and Taxation Code is amended to read:

8957. (a) Subject to the limitations in subdivisions (b) and (c), the board may by notice of levy, served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a user, vendor, or other person liable for any amount under this part to withhold from those credits or other personal property the amount of any tax, interest, or penalties due from that user, vendor, or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the board at those times as it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in Section 9105 of the Commercial Code. The term "payments" does include any of the following:

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

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the user, vendor, or other person liable for the tax.

(3) Any other payments or credits due or becoming due the user, vendor, or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

SEC. 19. Section 9181 of the Revenue and Taxation Code is amended to read:

9181. (a) The board may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed, 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.

(b) As an alternative to subdivision (a), the board may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed. In recovering any erroneous refund or credit, the board may, in its discretion, issue a deficiency determination in accordance with Article 2 (commencing with Section 8776) or Article 4 (commencing with Section 8826) of Chapter 4. Except in the case of fraud, the deficiency determination shall be made by the board within three years from the date of the Controller's warrant or date of credit.

SEC. 20. Section 9182 of the Revenue and Taxation Code is amended to read:

9182. In any action brought pursuant to subdivision (a) of Section 9181, the court may, with the consent of the Attorney General, order a change in the place of trial.

SEC. 21. Section 9183 of the Revenue and Taxation Code is amended to read:

9183. The Attorney General shall prosecute any action brought pursuant to subdivision (a) of Section 9181, and the provisions of the

Code of Civil Procedure relating to service of summons, pleadings, proofs, trials and appeals shall apply to the proceedings.

SEC. 22. Section 9255.1 of the Revenue and Taxation Code is amended 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.

(c) The board may furnish any interstate user information obtained by the board under this part to any state or federal agency for use by that agency in the enforcement of interstate user registration or licensing laws, or interstate vehicle registration or licensing laws.

SEC. 23. Section 30315 of the Revenue and Taxation Code is amended to read:

30315. (a) The board may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a distributor, dealer, or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any tax, interest, or penalties due from the distributor, dealer, or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the board at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in Section 9105 of the Commercial Code. The term "payments" does include any of the following:

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

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the distributor, dealer, or other person liable for the tax.

(3) Any other payments or credits due or becoming due the distributor, dealer, or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

SEC. 24. Section 30381 of the Revenue and Taxation Code is amended to read:

30381. (a) The board may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed, 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.

(b) As an alternative to subdivision (a), the board may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed. In recovering any erroneous refund or credit, the board may, in its discretion, issue a deficiency determination in accordance with Article 3 (commencing with Section 30173) of Chapter 3.5, or Article 2 (commencing with Section 30201) or Article 4 (commencing with Section 30241) of Chapter 4. Except in the case of fraud, the deficiency determination shall be made by the board within three years from the date of the Controller's warrant or date of credit.

SEC. 25. Section 30382 is added to the Revenue and Taxation Code, to read:

30382. In any action brought pursuant to subdivision (a) of Section 30381, the court may, with the consent of the Attorney General, order a change in the place of trial.

SEC. 26. Section 30383 of the Revenue and Taxation Code is amended to read:

30383. The Attorney General shall prosecute any action brought pursuant to subdivision (a) of Section 30381, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proofs, trials, and appeals shall apply to the proceedings.

SEC. 27. Section 32387 of the Revenue and Taxation Code is amended to read:

32387. (a) The board may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a taxpayer or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any tax, interest, or penalties due from the taxpayer or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the board at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in Section 9105 of the Commercial Code. The term "payments" does include any of the following:

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

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the distributor, dealer, or other person liable for the tax.

(3) Any other payments or credits due or becoming due the distributor, dealer, or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the consumer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

SEC. 28. Section 32431 of the Revenue and Taxation Code is amended to read:

32431. (a) The Controller may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed, 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.

(b) As an alternative to subdivision (a), the board may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed. In recovering any erroneous refund or credit, the board may, in its discretion, issue a deficiency determination in accordance with Article 2 (commencing with Section 32271) or Article 5 (commencing with Section 32311) of Chapter 6. Except in the case of fraud, the deficiency determination shall be made by the board within three years from the date of the Controller's warrant or date of credit.

SEC. 29. Section 32432 is added to the Revenue and Taxation Code, to read:

32432. In any action brought pursuant to subdivision (a) of Section 32431, the court may, with the consent of the Attorney General, order a change in the place of trial.

SEC. 30. Section 32433 is added to the Revenue and Taxation Code, to read:

32433. The Attorney General shall prosecute any action brought pursuant to subdivision (a) of Section 32431, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proof, trials, and appeals shall apply to the proceedings.

SEC. 31. Article 4 (commencing with Section 40135) is added to Chapter 5 of Part 19 of Division 2 of the Revenue and Taxation Code, to read:

Article 4. Recovery of Erroneous Refunds

40135. (a) The board may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed, 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.

(b) As an alternative to subdivision (a), the board may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed. In recovering any erroneous refund or credit, the board may, in its discretion, issue a deficiency determination in accordance with Article 3 (commencing

with Section 40071) of Chapter 4. Except in the case of fraud, the deficiency determination shall be made by the board within three years from the date of the Controller's warrant or date of credit.

40136. In any action brought pursuant to subdivision (a) of Section 40135, the court may, with the consent of the Attorney General, order a change in the place of trial.

40137. The Attorney General shall prosecute any action brought pursuant to subdivision (a) of Section 40135, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proof, trials, and appeals shall apply to the proceedings.

SEC. 32. Section 40155 of the Revenue and Taxation Code is amended to read:

40155. (a) The board may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a consumer or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any surcharge, interest, or penalties due from the consumer or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the board at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in Section 9105 of the Commercial Code. The term "payments" does include any of the following:

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

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the consumer or other person liable for the surcharge.

(3) Any other payments or credits due or becoming due the consumer or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the consumer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

SEC. 33. Article 4 (commencing with Section 41114.1) is added to Chapter 5 of Part 20 of Division 2 of the Revenue and Taxation Code, to read:

Article 4. Recovery of Erroneous Refunds

41114.1. (a) The board may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed, 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.

(b) As an alternative to subdivision (a), the board may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed. In recovering any erroneous refund or credit, the board may, in its discretion, issue a deficiency determination in accordance with Article 3 (commencing with Section 41070) of Chapter 4. Except in the case of fraud, the deficiency determination shall be made by the board within three years from the date of the Controller's warrant or date of credit.

41114.2. In any action brought pursuant to subdivision (a) of Section 41114.1, the court may, with the consent of the Attorney General, order a change in the place of trial.

41114.3. The Attorney General shall prosecute any action brought pursuant to subdivision (a) of Section 41114.1, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proof, trials, and appeals shall apply to the proceedings.

SEC. 34. Section 41123.5 of the Revenue and Taxation Code is amended to read:

41123.5. (a) The board may, by notice of levy served personally or by first-class mail, require all persons, other than a service supplier, having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a service user or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any surcharge, interest, or penalties due from the service user or

other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the board at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in Section 9105 of the Commercial Code. The term "payments" does include any of the following:

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

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the service user or other person liable for the surcharge.

(3) Any other payments or credits due or becoming due the service user or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the service user and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

SEC. 35. Section 43444.2 of the Revenue and Taxation Code is amended to read:

43444.2. (a) The board may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a taxpayer or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any tax, interest, or

penalties due from the taxpayer or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the board at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in Section 9105 of the Commercial Code. The term "payments" does include any of the following:

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

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the distributor, dealer, or other person liable for the tax.

(3) Any other payments or credits due or becoming due the distributor, dealer, or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

SEC. 36. Section 43481 of the Revenue and Taxation Code is amended to read:

43481. (a) The Controller may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed, 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.

(b) As an alternative to subdivision (a), the board may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed. In recovering any erroneous refund or credit, the board may, in its discretion, issue a deficiency determination in accordance with Article 2 (commencing with Section 43201) or Article 5 (commencing with Section 43350) of Chapter 3. Except in the case of fraud, the deficiency determination shall be made by the board within three years from the date of the Controller's warrant or date of credit.

SEC. 37. Section 43482 is added to the Revenue and Taxation Code, to read:

43482. In any action brought pursuant to subdivision (a) of Section 43481, the court may, with the consent of the Attorney General, order a change in the place of trial.

SEC. 38. Section 43483 is added to the Revenue and Taxation Code, to read:

43483. The Attorney General shall prosecute any action brought pursuant to subdivision (a) of Section 43481, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proof, trials, and appeals shall apply to the proceedings.

SEC. 39. Section 45605 of the Revenue and Taxation Code is amended to read:

45605. (a) The board may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a fee payer or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any fee, interest, or penalties due from the fee payer or other person, or the amount of any liability incurred under this part, and to transmit the amount withheld to the board at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in Section 9105 of the Commercial Code. The term "payments" does include any of the following:

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

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the fee payer or other person liable for the fee.

(3) Any other payments or credits due or becoming due the fee payer or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the fee payer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

SEC. 40. Section 45751 of the Revenue and Taxation Code is amended to read:

45751. (a) The Controller may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed, 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.

(b) As an alternative to subdivision (a), the board may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed. In recovering any erroneous refund or credit, the board may, in its discretion, issue a deficiency determination in accordance with Article 2 (commencing with Section 45201) or Article 4 (commencing with Section 45351) of Chapter 3. Except in the case of fraud, the deficiency determination shall be made by the board within three years from the date of the Controller's warrant or date of credit.

SEC. 41. Section 45752 is added to the Revenue and Taxation Code, to read:

45752. In any action brought pursuant to subdivision (a) of Section 45751, the court may, with the consent of the Attorney General, order a change in the place of trial.

SEC. 42. Section 45753 is added to the Revenue and Taxation Code, to read:

45753. The Attorney General shall prosecute any action brought pursuant to subdivision (a) of Section 45751, and the provisions of the

Code of Civil Procedure relating to service of summons, pleadings, proof, trials, and appeals shall apply to the proceedings.

SEC. 43. Section 46406 of the Revenue and Taxation Code is amended to read:

46406. (a) The board may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a fee payer or other person liable for any amount under this part to withhold from those credits or other personal property the amount of any fee, interest, or penalties due from that fee payer or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the board at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in Section 9105 of the Commercial Code. The term "payments" does include any of the following:

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

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the fee payer or other person liable for the fee.

(3) Any other payments or credits due or becoming due the fee payer or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the fee payer and shall be delivered

or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

SEC. 44. Section 46541 of the Revenue and Taxation Code is amended to read:

46541. (a) The Controller may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed, 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.

(b) As an alternative to subdivision (a), the board may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed. In recovering any erroneous refund or credit, the board may, in its discretion, issue a deficiency determination in accordance with Article 2 (commencing with Section 46201) or Article 4 (commencing with Section 46301) of Chapter 3. Except in the case of fraud, the deficiency determination shall be made by the board within three years from the date of the Controller's warrant or date of credit.

SEC. 45. Section 46542 is added to the Revenue and Taxation Code, to read:

46542. In any action brought pursuant to subdivision (a) of Section 46541, the court may, with the consent of the Attorney General, order a change in the place of trial.

SEC. 46. Section 46543 is added to the Revenue and Taxation Code, to read:

46543. The Attorney General shall prosecute any action brought pursuant to subdivision (a) of Section 46541, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proof, trials, and appeals shall apply to the proceedings.

SEC. 47. Section 50136 of the Revenue and Taxation Code is amended to read:

50136. (a) The board may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a fee payer or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any fee, interest, or penalties due from the fee payer or other person, or the amount of any liability incurred under this part, and to transmit the amount withheld to the board at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn,

or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in Section 9105 of the Commercial Code. The term "payments" does include any of the following:

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

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the fee payer or other person liable for the fee.

(3) Any other payments or credits due or becoming due the fee payer or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the fee payer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

SEC. 48. Section 50150 of the Revenue and Taxation Code is amended to read:

50150. (a) The Controller may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed, 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.

(b) As an alternative to subdivision (a), the board may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed. In recovering any erroneous refund or credit, the board may, in its discretion, issue a deficiency determination in accordance with Article 2 (commencing with Section 50113) or Article 4 (commencing with Section 50120.1) of Chapter 3. Except in the case of fraud, the deficiency determination shall be made by the board within three years from the date of the Controller's warrant or date of credit.

SEC. 49. Section 50150.1 is added to the Revenue and Taxation Code, to read:

50150.1. In any action brought pursuant to subdivision (a) of Section 50150, the court may, with the consent of the Attorney General, order a change in the place of trial.

SEC. 50. Section 50150.2 is added to the Revenue and Taxation Code, to read:

50150.2. The Attorney General shall prosecute any action brought pursuant to subdivision (a) of Section 50150, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proof, trials, and appeals shall apply to the proceedings.

SEC. 51. Section 55205 of the Revenue and Taxation Code is amended to read:

55205. (a) The board may, by notice of levy, served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to the fee payer or other person liable for any amount under this part to withhold from these credits or other personal property the amount of the fee, interest, or penalties due from the fee payer or other person, or the amount of any liability incurred under this part, and to transmit the amount withheld to the board at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(c) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in Section 9105 of the Commercial Code. The term "payments" does include any of the following:

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

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the fee payer or other person liable for the fee.

(3) Any other payments or credits due or becoming due the fee payer or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(d) In the case of a financial institution, to be effective, the notice shall state the amount due from the fee payer and shall be delivered or mailed to the branch office of the financial institution where the credits or other property are held, unless another branch or office is designated by the financial institution to receive the notice.

SEC. 52. Section 55261 of the Revenue and Taxation Code is amended to read:

55261. (a) The Controller may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed, 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.

(b) As an alternative to subdivision (a), the board may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed. In recovering any erroneous refund or credit, the board may, in its discretion, issue a deficiency determination in accordance with Article 2 (commencing with Section 55061) or Article 4 (commencing with Section 55101) of Chapter 3. Except in the case of fraud, the deficiency determination shall be made by the board within three years from the date of the Controller's warrant or date of credit.

SEC. 53. Section 55262 is added to the Revenue and Taxation Code, to read:

55262. In any action brought pursuant to subdivision (a) of Section 55261, the court may, with the consent of the Attorney General, order a change in the place of trial.

SEC. 54. Section 55263 is added to the Revenue and Taxation Code, to read:

55263. The Attorney General shall prosecute any action brought pursuant to subdivision (a) of Section 55263, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proof, trials, and appeals shall apply to the proceedings.

SEC. 55. Section 60122 of the Revenue and Taxation Code is amended to read:

60122. The board or its authorized representative may issue a California fuel trip permit to interstate users for entry into this state. The California fuel trip permit shall be valid for four consecutive days and includes any reentry into the state during the four-day period. The fee for issuance of a California fuel trip permit is thirty dollars ($30). Other provisions of this article and Article 1 (commencing with Section 60201) of Chapter 6 shall not apply to the holder of a California fuel trip permit who uses only diesel fuel brought into this state in the fuel tank of the qualified motor vehicle and diesel fuel purchased in this state with the diesel fuel tax paid and delivered into

the fuel tank of the qualified motor vehicle. Any diesel fuel tax paid to a diesel vendor for diesel fuel taken out of the state in the fuel tank of a qualified motor vehicle operated under a California fuel trip permit shall not be refunded to the holder of the California fuel trip permit, notwithstanding any other provision of this part.

The board may enter into an interagency agreement with the Department of Motor Vehicles providing for the issuance of California fuel trip permits by that department.

SEC. 56. Section 60407 of the Revenue and Taxation Code is amended to read:

60407. (a) Subject to the limitations in subdivisions (b) and (c), the board may by notice of levy, served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a person liable for any amount under this part to withhold from those credits or other personal property the amount of any tax, interest, or penalties due from that person, or the amount of any liability incurred by him or her under this part, and to transmit the amount withheld to the board at those times as it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, "payment" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in Section 9105 of the Commercial Code. "Payment" does include any of the following:

(1) Any payment due for services of an independent contractor, dividends, rents, royalties, residuals, patent rights, or mineral or other natural rights.

(2) Any payment or credit due or becoming due periodically as the result of an enforceable obligation to the person liable for the tax.

(3) Any other payment or credit due or becoming due the person liable as the result of a written or oral contract for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

SEC. 57. Section 60561 of the Revenue and Taxation Code is amended to read:

60561. (a) The board may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed, 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.

(b) As an alternative to subdivision (a), the board may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed. In recovering any erroneous refund or credit, the board may, in its discretion, issue a deficiency determination in accordance with Article 3 (commencing with Section 60310) or Article 4 (commencing with Section 60330) of Chapter 6. Except in the case of fraud, the deficiency determination shall be made by the board within three years from the date of the Controller's warrant or date of credit.

SEC. 58. Section 60562 is added to the Revenue and Taxation Code, to read:

60562. In any action brought pursuant to subdivision (a) of Section 60561, the court may, with the consent of the Attorney General, order a change in the place of trial.

SEC. 59. Section 60563 is added to the Revenue and Taxation Code, to read:

60563. The Attorney General shall prosecute any action brought pursuant to subdivision (a) of Section 60561, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proof, trials, and appeals shall apply to the proceedings.

SEC. 60. 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.

(c) The board may furnish any interstate user information obtained by the board under this part to any state or federal agency for use by that agency in the enforcement of interstate user registration or licensing laws, or interstate vehicle registration or licensing laws.

SEC. 61. It is the intent of the Legislature in enacting those provisions of this act that allow the State Board of Equalization to recover refunds administratively that no increase in taxpayer costs result from taxpayer compliance with these provisions.

CHAPTER 610

An act to add Sections 81149 and 81530.5 to the Education Code, relating to community colleges.

[Approved by Governor September 19, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 81149 is added to the Education Code, to read:

81149. (a) Notwithstanding any provision of law, a community college district may purchase any offsite building constructed prior to January 1, 1998 that meets the structural requirements of the 1976 Uniform Building Code, or subsequent additions to that code, but, that does not meet the requirements of Section 81130, for use as a school building, as defined in Section 81130.5, if the governing board of the district finds that all of the following conditions have been met:

(1) A structural engineer has inspected the building and submitted a report to the governing board of the community college district that certifies that the building is in substantial compliance with the requirements of this article, or describes in detail any structural modifications necessary to render the building in substantial compliance with the this article. For purposes of this section, substantial compliance with this article means that the building is likely to resist, without catastrophic collapse, earthquake forces generated by major earthquakes of the intensity and severity of the strongest experienced in California, but may experience some reparable architectural or structural damage. This 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 those items are 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 nonstructural elements, including, but not limited to, light fixtures, heating, and air-conditioning diffusers are adequately braced or anchored.

(2) The governing board of the community college district shall forward the report submitted pursuant to paragraph (1) to the Department of General Services for its review. Within 45 working days, the Department of General Services shall review the report for compliance with the above requirements, to provide feedback to the structural engineer regarding any insufficiencies with the report, and to determine whether or not the building is in substantial compliance with the requirements of this article, or whether any proposed structural modifications will render the structure in substantial compliance with this article. If the Department of General Services does not respond within 45 working days of the submission of the final and complete report, the department will be deemed to have concurred with the structural engineer's report. If structural modifications are necessary to achieve substantial compliance with this article, plans shall be submitted to the department for review and approval. Construction shall be completed in compliance with the continuous inspection requirements of this article.

(b) (1) No member of the governing board of a community college district, nor any employee of a community college district, shall be held personally liable for injury to persons or damage to property resulting from the fact that the governing board of the community college district purchased a building pursuant to this subdivision for a school and the building was not constructed pursuant to the requirements of Section 81130.

(2) The exemption from personal liability for members of the governing board and employees of a community college district described in paragraph (1) is not intended to limit the liability of the community college district for injury to persons or damage to property resulting from the fact that the governing board or any employee of the community college district used a building pursuant to this subdivision for a school if the building was not constructed pursuant to the requirements of Section 81130. The exemption from personal liability for members of the governing board and employees of a community college district described in paragraph (1) is not intended to limit the liability of the community college district, the governing board or the district's employees pursuant to Section 835 of the Government Code.

(3) Section 81144 is not applicable to a person who, pursuant to this section, purchases a building that meets the requirements of this

section but does not meet the requirements of Section 81130. Approval and use of a building pursuant to this section does not constitute a violation of this article.

SEC. 2. Section 81530.5 is added to the Education Code, to read:

81530.5. (a) Notwithstanding Section 81530, or any other provision of law, a community college district may lease an offsite commercial building that does not meet the requirements of Section 81130, for use as a school building, as defined in Section 81130.5, 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 community college district that certifies that the building is in substantial compliance with the requirements of this article. For purposes of this section, substantial compliance with this article means that the building is likely, without catastrophic collapse, to resist earthquake forces generated by major earthquakes of the intensity and severity of the strongest experienced in California, but may experience some reparable architectural or structural damage. 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 those items are 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 deemed necessary for the satisfactory performance of the building.

(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.

(b) The governing board of the community college district shall forward the report submitted pursuant to paragraph (3) of subdivision (a) to the Department of General Services for its review. Within 45 working days, the Department of General Services shall review the report for compliance with the above requirements, to provide feedback to the structural engineer regarding any insufficiencies with the report, and to determine whether or not the building is in substantial compliance with the requirements of this article. If the Department of General Services does not respond within 45 working days of the submission of the final and complete report, the department will be deemed to have concurred with the

structural engineer's report. A final decision by the governing board of the community college district to occupy the building for school purposes shall not occur until the governing board has reviewed and considered the feedback of the department, or the 45 workday review period has passed.

(c) (1) No member of the governing board of a community college district, nor any employee of a community college district, shall be held personally liable for injury to persons or damage to property resulting from the fact that the governing board of the community college district used a commercial building pursuant to this subdivision for a school and the building was not constructed under the requirements of Section 81130.

(2) The exemption from personal liability for members of the governing board and employees of a community college district described in paragraph (1) is not intended to limit the liability of the community college district for injury to persons or damage to property resulting from the fact that the governing board or any employee of the community college district used a commercial building pursuant to this subdivision for educational purposes and the building was not constructed under the requirements of Section 81130. The exemption from personal liability for members of the governing board and employees of a community college district described in paragraph (1) is not intended to limit the liability of the community college district, the governing board or the district's employees pursuant to Section 835 of the Government Code.

(3) Section 81144 is not applicable to a person who, pursuant to this section, leases or uses a building for a community college building that meets the requirements of this section but does not meet the requirements of Section 81130. Approval and use of a building pursuant to this section does not constitute a violation of this article.

CHAPTER 611

An act to add and repeal Article 10 (commencing with Section 5170) of Chapter 1 of Division 3 of the Business and Professions Code, relating to accountancy.

[Approved by Governor September 19, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Article 10 (commencing with Section 5170) is added to Chapter 1 of Division 3 of the Business and Professions Code, to read:

Article 10. Volunteer Accounting Services

5170. (a) The board may enter into a contract with a nonprofit organization controlled by licensees to provide volunteer accounting services within the state. The contract shall not exceed fifty thousand dollars ($50,000) per year.

(b) It is the intent of the Legislature that the board provide funding to the contractor only to the extent that this funding does not adversely affect the board's ability to meet its consumer protection mandates.

(c) The board shall follow the contracting procedure set forth in the State Administrative Manual. The contract shall emphasize a capacity and commitment to provide a structure for the provision of a volunteer community assistance program within the accounting profession. These services shall be available throughout the state and shall provide the assistance of volunteers to serve nonprofit organizations that are unable to afford to pay professional accounting fees. Volunteer assistance shall include, but need not be limited to, both of the following:

(1) Installation, evaluation, or revision of accounting systems, preparation of tax returns, financial reports, budgets, and applications for tax exemption, projection of cash flows, review of internal control and reporting systems, training on accounting systems operation, and evaluation of computer needs.

(2) Matching accountants willing to serve on the board of directors or trustees of a nonprofit organization with those groups in need of those persons.

(d) The contractor shall report program results to the board quarterly and to the Legislature annually.

(e) The board may use funds in the Accountancy Fund to pay the costs of the contract authorized pursuant to this section upon appropriation in the Budget Act.

(f) Payments under any contract shall be made on a quarterly basis in advance.

5171. (a) An audit of the contract authorized pursuant to Section 5170 shall be performed annually by an independent auditor in accordance with generally accepted auditing standards.

(b) The cost of the audit shall be paid from funds appropriated by the board as part of the contract authorized pursuant to Section 5170.

(c) An audit report shall be prepared upon completion of the audit and shall be submitted to the board within 120 days after the close of the fiscal year.

5172. This article shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2004, deletes or extends that date.

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CHAPTER 612

An act to amend Sections 11002 and 11003 of the Government Code, and to amend Sections 7084, 7091, and 7097 of, and to add Sections 6593.5, 6832, 6964, and 7094.1 to, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 19, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 11002 of the Government Code is amended to read:

11002. If a remittance to cover a payment required by law to be made to the state or to a state agency on or before a specified date is sent through the United States mail or through a bona fide commercial delivery service, as determined by the state or the state agency addressee, properly addressed with postage prepaid, it shall be deemed received on the date shown by the cancellation mark stamped upon the envelope containing the remittance or on the date it was mailed if proof satisfactory to the state or state agency establishes that the mailing occurred on an earlier date.

If a remittance to cover a payment required by law to be made to the state or to a state agency on or before a specified time on a specified date is sent through the United States mail or through a bona fide commercial delivery service, as determined by the state or the state agency addressee, properly addressed with postage prepaid, and the cancellation mark is placed on the envelope after it is deposited in the mail:

(a) Where the cancellation mark shows both date and time, the remittance shall be deemed received on the date shown by the cancellation mark and by the time specified by law for that date.

(b) Where the cancellation mark shows only the date, the remittance shall be deemed received within the time and date specified when the cancellation mark bears a date on or before which payment is required.

SEC. 2. Section 11003 of the Government Code is amended to read:

11003. If an application, tax return or claim for credit or refund required by law to be filed with the state or state agency on or before a specified date is filed with a state agency through the United States mail or through a bona fide commercial delivery service, as determined by the state or the state agency addressee, properly addressed with postage prepaid, it shall be deemed filed on the date shown by the cancellation mark stamped on the envelope containing it, or on the date it was mailed if proof satisfactory to the state agency establishes that the mailing occurred on an earlier date.

If an application, tax return or claim for credit or refund required by law to be filed with the state or state agency on or before a specified time on a specified date is sent through the United States mail or through a bona fide commercial delivery service, as determined by the state or the state agency addressee, properly addressed with postage prepaid, and the cancellation mark is placed on the envelope after it is deposited in the mail:

(a) Where the cancellation mark shows both date and time, the application, tax return or claim for credit or refund shall be deemed filed on the date shown by the cancellation mark and by the time specified by law for that date.

(b) Where the cancellation mark shows only the date, the application, tax return or claim for credit or refund shall be deemed filed within the time and date specified when the cancellation mark bears a date on or before the specified date of filing.

SEC. 3. Section 6593.5 is added to the Revenue and Taxation Code, to read:

6593.5. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by Sections 6480.4, 6480.8, 6513, 6591, and 6592.5 under the following circumstances:

(1) Where the failure to pay tax is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(2) Where failure to pay use tax on a vehicle or vessel registered with the Department of Motor Vehicles was the direct result of an error by the Department of Motor Vehicles in calculating the use tax.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the taxpayer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on tax liabilities that arise during taxable periods commencing on or after July 1, 1999.

SEC. 4. Section 6832 is added to the Revenue and Taxation Code, to read:

6832. (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any taxes due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the taxpayer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the

termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the tax, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of taxes, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Subdivision (b) shall not apply to any case where the board finds collection of the tax to be in jeopardy.

SEC. 5. Section 6964 is added to the Revenue and Taxation Code, to read:

6964. (a) Notwithstanding any other provision of this part, if the board finds that neither the person liable for payment of tax nor any party related to that person has in any way caused an erroneous refund for which an action for recovery is provided under Section 6961, no interest shall be imposed on the amount of that erroneous refund until 30 days after the date on which the board mails a notice of determination for repayment of the erroneous refund to the person. The act of filing a claim for refund shall not be considered as causing the erroneous refund.

(b) This section is operative for any action for recovery under Section 6961 on or after July 1, 1999.

SEC. 6. Section 7084 of the Revenue and Taxation Code is amended to read:

7084. (a) The board shall develop and implement a taxpayer education and information program directed at, but not limited to, all of the following groups:

(1) Taxpayers newly registered with the board.

(2) Taxpayer or industry groups identified in the annual report described in Section 7085.

(3) Board audit and compliance staff.

(b) The education and information program shall include all of the following:

(1) Mailings to, or appropriate and effective contact with, the taxpayer groups specified in subdivision (a) which explain in simplified terms the most common areas of noncompliance the taxpayers or industry groups are likely to encounter.

(2) A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities as a holder of a seller's permit or use tax registrant and the most common areas of noncompliance encountered by participants in their business or industry.

(3) Participation in small business seminars and similar programs organized by federal, state, and local agencies.

(4) Revision of taxpayer educational materials currently produced by the board which explain the most common areas of taxpayer nonconformance in simplified terms.

(5) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.

(c) Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

SEC. 7. Section 7091 of the Revenue and Taxation Code is amended to read:

7091. (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of filing petitions for redetermination and claims for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those which relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to this section shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 1999.

SEC. 8. Section 7094.1 is added to the Revenue and Taxation Code, to read:

7094.1. (a) Except in any case where the board finds collection of the tax to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the taxpayer if the board determines any one of the following:

(1) The levy on the property was not in accordance with the law.

(2) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 6832 to satisfy the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.

(3) The return of the property will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 7096.

SEC. 9. Section 7097 of the Revenue and Taxation Code is amended to read:

7097. (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 preliminary notice required by this section shall not apply to jeopardy determinations issued under Article 4 (commencing with Section 6536) of Chapter 5.

(c) If the board determines that filing a lien was in error, it shall mail a release to the taxpayer and the entity recording the lien as soon as possible, but no later than seven days, after this determination and the receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the taxpayer and the entity recording the lien.

(d) When the board releases a lien erroneously filed, notice of that fact shall be mailed to the taxpayer and, 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.

(e) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

CHAPTER 613

An act to amend Section 11571 of, and to add and repeal Section 11571.1 of, the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 19, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 11571 of the Health and Safety Code is amended to read:

11571. Whenever there is reason to believe that a nuisance as described in Section 11570 is kept, maintained, or exists in any county, the district attorney of the county, in the name of the people, may, or the city attorney of any incorporated city or of any city and county, or any citizen of the state resident in the county, in his or her own name, may maintain an action to abate and prevent the nuisance and perpetually to enjoin the person conducting or maintaining it, and the owner, lessee, or agent of the building or place, in or upon which the nuisance exists, from directly or indirectly maintaining or permitting the nuisance.

SEC. 2. Section 11571.1 is added to the Health and Safety Code, to read:

11571.1. (a) To effectuate the purposes of this article, the city prosecutor or city attorney may file, in the name of the people, an action for unlawful detainer against any person who is in violation of the nuisance or illegal purpose provisions of subdivision 4 of Section 1161 of the Code of Civil Procedure, with respect to a controlled substance purpose. In filing this action, the city prosecutor or city attorney shall utilize the procedures set forth in Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure, except that in cases filed under this section, the following also shall apply:

(1) Prior to filing an action pursuant to this section, the city prosecutor or city attorney shall give 15 calendar days written notice to the owner , requiring the owner to file an action for the removal of the person who is in violation of the nuisance or illegal purpose provisions of subdivision 4 of Section 1161 of the Code of Civil Procedure with respect to a controlled substance purpose. This notice shall include sufficient documentation establishing a violation of the nuisance or illegal purpose provisions of subdivision 4 of Section 1161 of the Code of Civil Procedure and shall be served upon the owner and the tenant in accordance with subdivision (e) of this section. The owner shall, within 15 calendar days of the mailing of the written notice, either provide the city prosecutor or city attorney with all relevant information pertaining to the unlawful detainer case, or provide a written explanation setting forth any safety-related reasons for noncompliance, and an assignment to the city prosecutor or city attorney of the right to bring an unlawful detainer action against the tenant. The assignment shall be on a form provided by the city prosecutor or city attorney and may contain a provision for costs of investigation, discovery, and reasonable attorney's fees, in an amount not to exceed six hundred dollars ($600). If the city prosecutor or city attorney accepts the assignment of the right of the owner to bring the unlawful detainer action, the owner shall retain

all other rights and duties, including the handling of the tenant's personal property, following issuance of the writ of possession and its delivery to and execution by the appropriate agency.

(2) Upon the failure of the owner to file an action pursuant to this section, or to respond to the city prosecutor or city attorney as provided in paragraph (1), or having filed an action, if the owner fails to prosecute it diligently and in good faith, the city prosecutor or city attorney may file and prosecute the action in municipal court, and join the owner as defendants in the action. This action shall have precedence over any similar proceeding thereafter brought by the owner , or to one previously brought by the owner and not prosecuted diligently and in good faith. Service of the summons and complaint upon the defendant owner shall be in accordance with Sections 415.10, 415.20, 415.30, 415.40, and 415.50 of the Code of Civil Procedure.

(3) If a jury or court finds the defendant tenant guilty of unlawful detainer in a case filed pursuant to paragraph (2), the city prosecutor or city attorney may be awarded costs, including the costs of investigation and discovery and reasonable attorney's fees. These costs shall be assessed against the defendant owner, to whom notice was directed pursuant to paragraph (1), and once an abstract of judgment is recorded, it shall constitute a lien on the subject real property.

(4) Nothing in this article shall prevent a local governing body from adopting and enforcing laws, consistent with this article relating to drug abatement. Where local laws duplicate or supplement this article, this article shall be construed as providing alternative remedies and not preempting the field.

(5) Nothing in this article shall prevent a tenant from receiving relief against a forfeiture of a lease pursuant to Section 1179 of the Code of Civil Procedure.

(b) In any proceeding brought under this section, the court may, upon a showing of good cause, issue a partial eviction ordering the removal of any person, including, but not limited to, members of the tenant's household if the court finds that the person has engaged in the activities described in subdivision (a). Persons removed pursuant to this section may be permanently barred from returning to or reentering any portion of the entire premises. The court may further order as an express condition of the tenancy that the remaining tenants shall not give permission to or invite any person who has been removed pursuant to this subdivision to return to or reenter any portion of the entire premises.

(c) For the purposes of this section, "controlled substance purpose" means the manufacture, cultivation, importation into the state, transportation, possession, possession for sale, sale, furnishing, administering, or giving away, or providing a place to use or fortification of a place involving, cocaine, phencyclidine, heroin, methamphetamine, or any other controlled substance, in a violation

of subdivision (a) of Section 11350, Section 11351, 11351.5, 11352, or 11359, subdivision (a) of Section 11360, or Section 11366, 11366.6, 11378, 11378.5, 11379, 11379.5, 11379.6, or 11383.

(d) Notwithstanding subdivision (b) of Section 68097.2 of the Government Code, a public entity may waive all or part of the costs incurred in furnishing the testimony of a peace officer in an unlawful detainer action brought pursuant to this section.

(e) The notice and documentation described in paragraph (1) of subdivision (a) shall be given in writing and may be given either by personal delivery or by deposit in the United States mail in a sealed envelope, postage prepaid, addressed to the owner at the address known to the public entity giving the notice, or as shown on the last equalized assessment roll, if not known. Separate notice and documentation shall be provided to the tenant in accordance with this subdivision. Service by mail shall be deemed to be completed at the time of deposit in the United States mail. Proof of giving the notice may be made by a declaration signed under penalty of perjury by any employee of the public entity which shows service in conformity with this section.

(f) This section shall only apply to the following courts in the County of Los Angeles:

(1) Los Angeles Judicial District, downtown courthouse.

(2) Los Angeles Judicial District, Van Nuys Branch.

(3) Los Cerritos Judicial District.

(4) Southeast Judicial District.

(5) Long Beach Judicial District.

(g) (1) The city attorney and city prosecutor shall maintain records of all actions filed pursuant to this section, including the collection of the following information:

(A) The number of notices provided pursuant to paragraph (1) of subdivision (a).

(B) The number of times that an owner, upon notice, files or fails to file an action following receipt of the notice.

(C) The number of times that an owner is joined as a defendant pursuant to this section.

(D) As to each case filed pursuant to this section, the following information:

(i) The final disposition of the action.

(ii) Whether the defendant was represented by counsel.

(iii) Whether the case was a trial by the court or trial by a jury.

(iv) Whether an appeal was taken, and, if so, the result of the appeal.

(v) Whether the court ordered a partial eviction.

(2) After judgment is entered in any proceeding brought under this section, the court shall submit to the Judicial Council, on a form provided by the Judicial Council, information on the case. That information shall include a brief summary of the facts of the case.

(3) Commencing January 1, 2000, copies of the records maintained pursuant to this section shall be filed annually with the Judicial Council on or before January 30 of each year. The Judicial Council shall thereafter submit a brief report to the Senate and Assembly Judiciary Committees on or before January 1, 2001, summarizing the information collected pursuant to this section and evaluating the merits of the pilot program established by this section.

(h) This section shall remain in effect only until January 1, 2002, and as of that date is repealed unless a later enacted statute 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 surrounding the drug problem in the jurisdictions of the Los Angeles Judicial District, downtown courthouse, the Los Angeles Judicial District, Van Nuys Branch, the Los Cerritos Judicial District, the Southeast Judicial District, and the Long Beach Judicial District. The facts constituting the special circumstances that distinguish these court jurisdictions in Los Angeles County from those in other counties are the severity of the problem and the widespread use of rental housing to facilitate drug trafficking.

CHAPTER 614

An act to amend Sections 7685.2, 9741, and 9745 of, and to add Sections 9740.5 and 9741.1 to, the Business and Professions Code, and to amend Sections 7010.7, 7054, 7116, 7117, and 103055 of the Health and Safety Code, relating to human remains.

[Approved by Governor September 19, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 7685.2 of the Business and Professions Code is amended to read:

7685.2. (a) No funeral director shall enter into a contract for furnishing services or property in connection with the burial or other disposal of human remains until he or she has first submitted to the potential purchaser of those services or property a written or printed memorandum containing the following information, provided that information is available at the time of execution of the contract:

(1) The total charge for the funeral director's services and the use of his or her facilities, including the preparation of the body and other professional services, and the charge for the use of automotive and other necessary equipment.

(2) An itemization of charges for the following merchandise as selected: the casket, an outside receptacle, and clothing.

(3) An itemization of fees or charges and the total amount of cash advances made by the funeral director for transportation, flowers, cemetery or crematory charges, newspaper notices, clergy honorarium, transcripts, telegrams, long distance telephone calls, music, and any other advances as authorized by the purchaser.

(4) An itemization of any other fees or charges not included above.

(5) The total of the amount specified in paragraphs (1) to (4), inclusive.

If the charge for any of the above items is not known at the time the contract is entered into, the funeral director shall advise the purchaser of the charge therefor, within a reasonable period after the information becomes available. All prices charged for items covered under Sections 7685 and 7685.1 shall be the same as those given under such sections.

(b) A funeral director shall obtain from the person with the right to control the disposition pursuant to Section 7100 of the Health and Safety Code, or the person prearranging the cremation and disposition of his or her own remains, a signed declaration designating specific instructions with respect to the disposition of cremated remains. The department shall make available a form upon which the declaration shall be made. The form shall include, but not be limited to, the names of the persons with the right to control the disposition of the cremated remains and the person who is contracting for the cremation services; the name of the deceased; the name of the funeral director in possession of the remains; the name of the crematorium; and specific instructions regarding the manner, location, and other pertinent details regarding the disposition of cremated remains. The form shall be signed and dated by the person arranging for the cremation and the funeral director in charge of providing service.

(c) A funeral director entering into a contract to furnish cremation services shall provide to the purchaser of cremation services, either on the first page of the contract for cremation services, or on a separate page attached to the contract, a written or printed notice containing the following information:

(1) "FOR MORE INFORMATION ON CEMETERY AND CREMATION MATTERS, CONTACT: Department of Consumer Affairs; (800) 952-5210.

(2) A person having the right to control disposition of cremated remains may remove the remains in a durable container from the place of cremation or interment, pursuant to Section 7054.6 of the Health and Safety Code.

(3) If the cremated remains container cannot accommodate all cremated remains of the deceased, the crematory shall provide a larger cremated remains container at no additional cost, or place the

excess in a second container that cannot easily come apart from the first, pursuant to Section 8345 of the Health and Safety Code.

SEC. 2. Section 9741 of the Business and Professions Code is amended to read:

9741. (a) Registration shall be on the form prescribed by the board and shall include, but not be limited to, the full name of the registrant, business and residence addresses, description and identification of aircraft or boats which may be used in dispensing cremated human remains, and the area to be served. Each registration application shall be accompanied by the cremated remains disposer fee.

(b) Every registered cremated remains disposer who dispenses human remains by air shall post a copy of his or her current pilot's license, and the address of the cremated remains storage area at his or her place of business. Every registered cremated remains disposer who dispenses human remains by boat shall post a copy of his or her current boating license and the address of the cremated remains storage area at his or her place of business.

SEC. 3. Section 9740.5 is added to the Business and Professions Code, to read:

9740.5. A cremated remains disposer shall dispose of cremated remains within 60 days of the receipt of those remains, unless a written signed reason for a delay is presented to the person with the right to control the disposition of the remains under Section 7100 of the Health and Safety Code.

SEC. 4. Section 9741.1 is added to the Business and Professions Code, to read:

9741.1. The Department of Consumer Affairs shall prepare and deliver to each registered cremated remains disposer a booklet that includes, but is not limited to, the following information: details about the registration and renewal requirements for cremated remains disposers; requirements for obtaining state permits to dispose of cremated human remains; state storage requirements, if any; statutory duties pursuant to this article, and other applicable state laws.

SEC. 5. Section 9745 of the Business and Professions Code is amended to read:

9745. Each cremated remains disposer shall file, and thereafter maintain an updated copy of, an annual report on a form prescribed by the Cemetery Program. The report shall include, but not be limited to, the names of the deceased persons whose cremated remains were disposed of, the dates of receipt of the cremated remains, the names and addresses of the persons who authorized disposal of those remains, the dates and locations of disposal of those remains, and the means and manner of disposition. The report shall cover the fiscal year ending on June 30th and shall be filed with the Cemetery Program no later than September 30th of each year.

SEC. 6. Section 7010.7 of the Health and Safety Code is amended to read:

7010.7. "Scattering" means the authorized dispersal of cremated remains at sea, in other areas of the state, or commingling in a defined area within a dedicated cemetery, in accordance with this chapter.

SEC. 7. Section 7054 of the Health and Safety Code is amended to read:

7054. (a) Except as authorized pursuant to the sections referred to in subdivision (b), every person who deposits or disposes of any human remains in any place, except in a cemetery, is guilty of a misdemeanor.

(b) Cremated remains may be disposed of pursuant to Sections 7116, 7117, and 103060, or Sections 7054.6 and 103060.

(c) Subdivision (a) of this section shall not apply to the reburial of Native American remains under an agreement developed pursuant to subdivision (*l*) of Section 5097.94 of the Public Resources Code, or implementation of a recommendation or agreement made pursuant to Section 5097.98 of the Public Resources Code.

SEC. 8. Section 7116 is added to the Health and Safety Code, to read:

7116. Cremated remains may be scattered or placed in areas where no local prohibition exists, provided that the cremated remains are not distinguishable to the public, are not in a container, and that the person who has control over disposition of the cremated remains has obtained written permission of the property owner or governing agency to scatter on the property. A state or local agency may adopt an ordinance, regulation, or policy, as appropriate, authorizing, consistent with this section, or specifically prohibiting, the scattering of cremated human remains on lands under the agency's jurisdiction. The placement or scattering of the cremated remains of more than one person in one location pursuant to this section shall not create a cemetery pursuant to Section 7003, Section 8100, or any other provision of law.

SEC. 9. Section 7117 of the Health and Safety Code is amended to read:

7117. (a) Cremated remains may be taken by boat from any harbor in this state, or by air, and scattered at sea. Cremated remains shall be removed from their container before the remains are scattered at sea.

(b) Any person who scatters at sea, either from a boat or from the air, any human cremated remains shall, file with the local registrar of births and deaths in the county nearest the point where the remains were scattered, a verified statement containing the name of the deceased person, the time and place of death, the place at which the cremated remains were scattered, and any other information that the local registrar of births and deaths may require. The first copy of the endorsed permit shall be filed with the local registrar of births and

deaths within 10 days of disposition. The third copy shall be returned to the office of issuance.

(c) For purposes of this section, the phrase "at sea" includes the inland navigable waters of this state, exclusive of lakes and streams, provided that no such scattering may take place within 500 yards of the shoreline. Nothing in this section shall be construed to allow the scattering of cremated human remains from a bridge or pier.

(d) Notwithstanding any other provision of this code, the cremated remains of a deceased person may be scattered at sea as provided in this section and Section 103060.

SEC. 10. Section 103055 of the Health and Safety Code is amended to read:

103055. (a) If the certificate of death is properly executed and complete, the local registrar of births and deaths shall issue a permit for disposition, that in all cases, shall specify any one of the following:

(1) The name of the cemetery where the remains shall be interred.

(2) Burial at sea as provided in Section 7117.

(3) The address or description of the place where remains shall be buried or scattered.

(4) The address of the location where the cremated remains will be kept, as provided in Section 7054.6, under the conditions the state registrar may approve, including, but not limited to, conditions in keeping with public sensibilities, applicable laws, and reasonable assurances that the disposition will be carried out in accordance with the prescribed conditions and will not constitute a private or public nuisance.

(b) Notwithstanding any other provisions of this part relative to issuance of a permit for disposition, whenever the death occurred from a disease declared by the state department to be infectious, contagious, or communicable and dangerous to the public health, no permit for the disposition of the body shall be issued by the local registrar, except under those conditions as may be prescribed by the state department and local health officers.

SEC. 11. Section 9740.5 of the Business and Professions Code, as added by this bill, shall not become operative if AB 1314 of the 1997–98 Regular Session is enacted and becomes effective on or before January 1, 1999, and adds Section 9744.5 to the Business and Professions Code.

CHAPTER 615

An act relating to forest resources, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 19, 1998. Filed with
Secretary of State September 21, 1998.]

On this date I have signed Assembly Bill No. 1986 with a reduction.

This bill would appropriate $245.5 million General Fund for the acquisition of the Headwaters Forest Preserve and related properties. This bill also specifies the conditions under which the funds could be encumbered, including specific requirements for the related Habitat Conservation Plan and implementation of a federal watershed study.

I am signing AB 1986, however, I am reducing the appropriation by a total of three million dollars ($3,000,000) from Section 1(b), which allocates fifteen million dollars ($15,000,000) to Humboldt County for economic assistance.

The remaining twelve million dollars ($12,000,000) included in the bill plus the five million ($5,000,000) allocated by federal government for economic development should provide adequate assistance to Humboldt County for this purpose.

PETE WILSON, Governor

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

SECTION 1. (a) The sum of two hundred forty-five million five hundred thousand dollars ($245,500,000) is hereby appropriated to the Controller from the General Fund for allocation in accordance with subdivision (b) and Sections 2 and 5 of this act.

(b) Of the funds appropriated by this section, fifteen million dollars ($15,000,000) shall be available for economic assistance for the County of Humboldt, up to $20,000,000 shall be allocated to the Wildlife Conservation Board and be available for the purchase at fair market value of the Grizzly Creek Marbled Murrelet Conservation Area, and up to five hundred thousand dollars ($500,000) shall be available to the Wildlife Conservation Board for expenditure for administrative expenses and costs related to the acquisition of properties authorized by this act.

(c) Notwithstanding any other provision of law:

(1) Funds appropriated pursuant to subdivision (a) for the purposes of Sections 2 and 3 of this act shall only be available until July 1, 1999, and as of that date shall revert to the General Fund.

(2) Funds appropriated pursuant to subdivision (a) for the purposes of Section 5 of this act shall only be available from July 1, 1999, until June 30, 2001, and as of that date shall revert to the General Fund.

(d) Funds appropriated pursuant to subdivision (a) shall be encumbered only if the United States Government has encumbered two hundred fifty million dollars ($250,000,000) as matching funds in fulfillment of the agreement dated September 28, 1996, among the United States of America, the State of California, MAXXAM Inc., and the Pacific Lumber Company, and any subsequent agreements adopted pursuant thereto.

SEC. 2. (a) Of the funds appropriated by Section 1 of this act, one hundred thirty million dollars ($130,000,000) is to be allocated to the Wildlife Conservation Board, subject to the conditions established pursuant to Section 3 of this act, for expenditure, notwithstanding

Section 13340 of the Government Code, without regard to fiscal years, to acquire the lands referenced in the Agreement dated September 28, 1996, which consist of approximately 4,500 acres commonly referred to as the Headwaters Forest, approximately 1,125 acres referred to as the Elk Head Forest, and approximately 9,600 acres referred to as the Elk River Property, which are located in the County of Humboldt, California for the purposes of consummating the Agreement dated September 28, 1996.

(b) This section is intended to provide the sole authority for the acquisition of the property, referenced in subdivision (a), that is the subject of the Agreement dated September 28, 1996, between the United States of America (hereafter, United States), the State of California, MAXXAM, Inc., and the Pacific Lumber Company (hereafter, Company). Of the entire Elk River Property, the United States and the State of California are to receive approximately 1,845 acres and the remaining approximately 7,755 acres of Elk River Property is to be transferred to the Company. The property to be acquired by the United States and the State of California is that property that is the subject of the Agreement dated September 28, 1996, as generally depicted on maps labeled as sheets 1 through 7 of Township 3 and 4 North, Ranges 1 East and 1 West, of the Humboldt Meridian, California, titled "Dependent Resurvey and Tract Survey," as approved by Lance J. Bishop, Chief Cadastral Surveyor, Bureau of Land Management, Sacramento, California. The land acquired by the United States and the State of California, which consists of approximately 7,470 acres, shall hereafter be known as the Headwaters Forest Preserve.

SEC. 3. Notwithstanding any other provision of law, funds appropriated by this act shall only be encumbered by the board if the final habitat conservation plan (hereafter "final HCP"), implementing agreement, and permits to allow the incidental take of threatened and endangered species, the drafts of which are more fully described in the notice published in the Federal Register on July 7, 1998 (hereafter "Draft Habitat Conservation Plan" or "Draft HCP") incorporate, at minimum, the following additional conditions and the final HCP is no less protective of aquatic or avian species than the draft HCP, as amended by those conditions:

(a) The final HCP shall establish a no-cut buffer of 100 feet on each side of each class 1 watercourse until all of the following conditions are met:

(1) The watershed analysis process described in the draft HCP has been completed for that watercourse, and the watershed assessment has been reviewed by the United States Fish and Wildlife Service and the United States National Marine Fisheries Service.

(2) The United States Fish and Wildlife Service or the National Marine Fisheries Service have established site-specific prescriptions for that watercourse. If the United States Fish and Wildlife Service or the United States National Marine Fisheries Service establish

site-specific prescriptions that differ from prescriptions proposed in the watershed assessment, the agency shall state in writing its reasons for doing so.

(3) The site-specific prescriptions established by the United States Fish and Wildlife Service or the National Marine Fisheries Service have been implemented on that watercourse.

(b) The final HCP shall establish a no-cut buffer of 30 feet on each side of each class 2 watercourse, which shall remain in effect until all of the following conditions are met:

(1) The watershed analysis process described in the draft HCP has been completed for that watercourse, and the watershed assessment has been reviewed by the United States Fish and Wildlife Service and the United States National Marine Fisheries Service.

(2) The United States Fish and Wildlife Service or the National Marine Fisheries Service have established site-specific prescriptions for that watercourse.

(3) The site-specific prescriptions established by the United States Fish and Wildlife Service or the National Marine Fisheries Service have been implemented on that watercourse. If the United States Fish and Wildlife Service or the United States National Marine Fisheries Service establish site-specific prescriptions that differ from prescriptions proposed in the watershed assessment, either of those services shall state in writing its reasons for doing so.

(c) Except as provided in subdivisions (a), (b), (d), and (j), the final HCP shall establish all those restrictions on class 1, 2, and 3 watercourses contained in the January 7, 1998, document entitled "Corrected Version Draft—Interagency Federal–State Aquatic Strategy and Mitigation for Timber Harvest and Roads for the Pacific Lumber Company," which shall remain in effect until all of the following conditions are met:

(1) The watershed analysis process described in the draft HCP has been completed for each watercourse, and the watershed assessment has been reviewed by the United States Fish and Wildlife Service and the United States National Marine Fisheries Service.

(2) The United States Fish and Wildlife Service or the National Marine Fisheries Service have established site-specific prescriptions for each watercourse.

(3) The site-specific prescriptions established by the United States Fish and Wildlife Service or the National Marine Fisheries Service have been implemented on that watercourse. If the United States Fish and Wildlife Service or the United States National Marine Fisheries Service establish site-specific prescriptions that differ from prescriptions proposed in the watershed assessment, the agency shall state in writing its reasons for doing so.

(d) The final HCP shall require that any site-specific prescriptions that are established by the United States Fish and Wildlife Service or the National Marine Fisheries Service, upon completion of the watershed analysis, shall be implemented by the Company so that

those prescriptions result in a no-cut buffer of not less than 30 feet, and not more than 170 feet, on each side of each class 1 and class 2 watercourse. However, with respect to the minimum 30 foot no-cut buffer on Class 2 watercourses, the United States Fish and Wildlife Service or the United States National Marine Fisheries Service may adjust the buffer if it determines that it will benefit aquatic habitat or species. However, in no event may the minimum 30 foot no-cut buffer be less than that distance established under the draft HCP.

(e) The final HCP shall provide that the United States Fish and Wildlife Service and the United States National Marine Fisheries Service, in consultation with the Department of Forestry and Fire Protection, the regional water quality control board, and the Department of Fish and Game, shall develop a peer review process to evaluate, on a spot-check basis, the appropriateness of completed analyses and prescriptions that are developed through the watershed analysis process.

(f) The final HCP shall provide that the Company, in consultation with the National Marine Fisheries Service and the United States Fish and Wildlife Service, shall establish a schedule that results in completion of the watershed analysis process within five years.

(g) The final HCP shall prohibit timber harvesting, including salvage logging and other management activities that are detrimental to the marbled murrelet or marbled murrelet habitat in the Marbled Murrelet Conservation Areas for the life of the incidental take permits, as defined in the February 27, 1998, document entitled "Pre-Permit Application Agreement in Principle" that are in effect in the following tracts of remnant and residual ancient forest that are depicted in the map titled "Murrelet Conservation Areas" that is on file in the office of the Secretary of the Resources Agency:

(i)	Elk Head Residual	564 acres
(ii)	Cooper Mill	722 acres
(iii)	Allen Creek	1,421 acres
(iv)	Allen Creek Extension	301 acres
(v)	Road 3	659 acres
(vi)	Owl Creek	904 acres
(vii)	Shaw Gift	548 acres
(viii)	Right Road 9	322 acres
(ix)	Road 7 and 9 North	501 acres
(x)	Booth's Run	776 acres
(xi)	Bell Lawrence	634 acres
(xii)	Lower North Fork Elk	531 acres

(h) The acreages established pursuant to subdivision (g) may be adjusted by the United States Fish and Wildlife Service or the United

States National Marine Fisheries Service, provided that the adjustments are made to more accurately describe Marbled Murrelet habitat. However, in no event shall the acreages be any less than those acreages established pursuant to the draft HCP.

(i) The final HCP shall prohibit the Company from timber harvesting, including salvage logging and other management activities, in the tract identified as the "Grizzly Creek Marbled Murrelet Conservation Area," as depicted on the map titled "Murrelet Conservation Areas," which is on file in the Office of the Secretary of the Resources Agency, for five years from the date of adoption of the final HCP to provide an opportunity for the purchase, and permanent protection of, that tract.

(j) The final HCP shall impose conditions on road-related activities that, on balance, are no less protective of species and habitat than the provisions contained in the February 27, 1998, document entitled "Pre-Permit Application Agreement in Principle."

(k) The final HCP shall require that the company shall submit all timber harvesting plans covering lands that are subject to the final HCP and the incidental take permit for review and comment, and for a finding as to whether or not the timber harvesting plan is consistent with the final HCP, to the United States National Marine Fisheries Service and the United States Fish and Wildlife Service at least 30 days prior to the earliest possible date of the timber harvesting plan approval by the Department of Forestry and Fire Protection. Nothing in this section shall affect the authority of the Department of Forestry and Fire Protection to approve or disapprove timber harvesting plans under state or federal law.

(*l*) The Legislature finds and declares the following:

(1) The final approval or disapproval of the draft HCP is exclusively within the jurisdiction of federal law and those agencies that implement federal law.

(2) It is the intent of the Legislature in authorizing the expenditure of funds pursuant to Section 2 of this act, and in establishing conditions on the use of those funds pursuant to this section, that the final HCP approved by the United States Fish and Wildlife Service and the National Marine Fisheries Service will incorporate the conditions set forth in this section and not be any less protective of aquatic or avian species than the provisions of this section.

SEC. 4. The sustained yield plan and any subsequent sustained yield plans for the Pacific Lumber Company (hereafter, Company) referenced in the Agreement dated September 28, 1996, between the United States of America, the State of California, MAXXAM, Inc., and the Company and prepared pursuant to that agreement, and any timber harvest plans prepared by the Company covering lands subject to the final HCP adopted pursuant thereto, shall comply with those conditions set forth in Section 3 of this act, with the Applications for Permits to Allow Incidental Take of Threatened and Endangered

Species, and the Habitat Conservation Plan and Implementation Agreement, as more fully described in the notice published in the Federal Register on July 7, 1998, and may not be any less protective of aquatic or avian species than the provisions of this act. Nothing in this section shall be construed as requiring the Department of Forestry and Fire Protection to make any additional findings relative to timber harvest plans pursuant to this section, other than those findings that are already required the law as it read on the effective date of this act.

SEC. 5. (a) Of the funds appropriated by Section 1 of this act, up to eighty million dollars ($80,000,000) is to be allocated to the Wildlife Conservation Board for expenditure by the board, effective July 1, 1999, notwithstanding Section 13340 of the Government Code, without regard to fiscal year, and subject to compliance with the conditions established pursuant to Section 3 and 4 of this act, to be applied to the purchase price of purchasing for fair market value the area identified as "Owl Creek" (MMCA) in the draft Habitat Conservation Plan submitted by Pacific Lumber Company, dated July 1998, as part of completing the Headwaters Agreement of September 28, 1996. To the extent funds allocated pursuant to this section remain after the purchase of the "Owl Creek" Tract, those funds may be reappropriated for the acquisition, at fair market value, of the tracts known as the "Elk River Property" and the previously unlogged ancient Douglas Fir forestland within the Mattole River watershed.

(1) The Wildlife Conservation Board is hereby authorized to purchase for its fair market value the tract of land identified in subdivision (a) as "Owl Creek".

(2) The Wildlife Conservation Board shall undertake an appraisal of the tract of land described in paragraph (1) to determine its fair market value. The appraisal shall be conducted by three qualified appraisers to be selected as follows:

(A) One appraiser selected by the Pacific Lumber Company.

(B) One appraiser selected by the board.

(C) One appraiser selected by the appraisers selected pursuant to subparagraphs (A) and (B).

(b) At the option of the Pacific Lumber Company, the appraisal methodology may assume the issuance of all necessary permits and approvals for the management of the "Owl Creek" tract as described in the draft HCP, including incidental take permits under the California and federal endangered species acts.

(c) On or before July 1, 2000, the Wildlife Conservation Board shall make a good faith offer to the Pacific Lumber Company for the purchase of the "Owl Creek" Tract.

(d) The Legislature finds and declares that the appropriation and allocation of funds for the purposes of subdivision (a) is intended to demonstrate a good faith commitment on the part of the state to purchase the Owl Creek tract. The Legislature further finds and

declares that the Wildlife Conservation Board shall undertake all feasible efforts to obtain private and nonprofit funding to assist in this purchase.

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

SEC. 6. The provisions of this act shall not, in any way, be construed to create any precedent or requirement that would be applicable to any other future timber harvest plan, sustained yield plan, habitat conservation plan, or to otherwise restrict or prohibit any other activity affecting forest resources that is currently permitted under state law other than those plans or activities that are subject to the requirements of this act.

SEC. 7. The provisions of this act are severable. If any provision of this or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 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 facilitate the acquisition of the Headwaters Forest pursuant to the September 28, 1996, agreement between the Pacific Lumber Company, the United States, and the State of California at the earliest possible time, thereby permanently preserving in public ownership the largest intact stand of ancient redwoods left in private ownership, it is necessary that this act take effect immediately.

CHAPTER 616

An act relating to electronic learning resources, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 19, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. The State Board of Education, after consultation with the Superintendent of Public Instruction, the State Department of Education, and any other interested parties, shall report to the Legislature no later than March 1, 1999, on how the current instructional materials adoption process can be improved or supplemented to enable the timely adoption of electronic learning resources. The report shall include specific recommendations for legislative action.

These recommendations shall include, but not be limited to, the identification of the following:

(a) A definition of electronic learning resources.

(b) A process specifically for electronic learning resources to substantially reduce the adoption time to address the time sensitive adoption needs of electronic learning resources.

(c) Potential unintended consequences.

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 give the State Board of Education sufficient time before March, 1, 1999, to have research performed and returned to the board on the question of how the current instructional materials adoption process can be improved or supplemented to enable the timely adoption of electronic learning resources, it is necessary that this act take effect immediately.

CHAPTER 617

An act to amend Section 1799.107 of the Health and Safety Code, and amend Section 3600.4 of the Labor Code, relating to firefighters.

[Approved by Governor September 19, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 1799.107 of the Health and Safety Code is amended to read:

1799.107. (a) The Legislature finds and declares that a threat to the public health and safety exists whenever there is a need for emergency services and that public entities and emergency rescue personnel should be encouraged to provide emergency services. To that end, a qualified immunity from liability shall be provided for public entities and emergency rescue personnel providing emergency services.

(b) Except as provided in Article 1 (commencing with Section 17000) of Chapter 1 of Division 9 of the Vehicle Code, neither a public entity nor emergency rescue personnel shall be liable for any injury caused by an action taken by the emergency rescue personnel acting within the scope of their employment to provide emergency services, unless the action taken was performed in bad faith or in a grossly negligent manner.

(c) For purposes of this section, it shall be presumed that the action taken when providing emergency services was performed in

good faith and without gross negligence. This presumption shall be one affecting the burden of proof.

(d) For purposes of this section, "emergency rescue personnel" means any person who is an officer, employee, or member of a fire department or fire protection or firefighting agency of the federal government, the State of California, a city, county, city and county, district, or other public or municipal corporation or political subdivision of this state, or of a private fire department, whether that person is a volunteer or partly paid or fully paid, while he or she is actually engaged in providing emergency services as defined by subdivision (e).

(e) For purposes of this section, "emergency services" includes, but is not limited to, first aid and medical services, rescue procedures and transportation, or other related activities necessary to insure the health or safety of a person in imminent peril.

SEC. 2. Section 3600.4 of the Labor Code is amended to read:

3600.4. (a) Whenever any firefighter of a city, county, city and county, district, or other public or municipal corporation or political subdivision, or any firefighter employed by a private entity, is injured, dies, or is disabled from performing his or her duties as a firefighter by reason of his or her proceeding to or engaging in a fire suppression or rescue operation, or the protection or preservation of life or property, anywhere in this state, including the local jurisdiction in which he or she is employed, but is not at the time acting under the immediate direction of his or her employer, he or she or his or her dependents, as the case may be, shall be accorded by his or her employer all of the same benefits of this division which he or she or they would have received had that firefighter been acting under the immediate direction of his or her employer. Any injury, disability, or death incurred under the circumstances described in this section shall be deemed to have arisen out of and been sustained in the course of employment for purposes of workers' compensation and all other benefits.

(b) Nothing in this section shall be deemed to:

(1) Require the extension of any benefits to a firefighter who at the time of his or her injury, death, or disability is acting for compensation from one other than the city, county, city and county, district, or other public or municipal corporation or political subdivision, or private entity, of his or her primary employment or enrollment.

(2) Require the extension of any benefits to a firefighter employed by a city, county, city and county, district, or other public or municipal corporation or political subdivision, or private entity, which by charter, ordinance, departmental regulation, or private employer policy, whether now in force or hereafter enacted or promulgated, expressly prohibits the activity giving rise to the injury, disability, or death. However, this paragraph shall not apply to relieve the employer from liability for benefits for any injury, disability, or

death of a firefighter when the firefighter is acting pursuant to Section 1799.107 of the Health and Safety Code.

CHAPTER 618

An act to repeal Section 1775.16 of the Code of Civil Procedure, relating to mediation.

[Approved by Governor September 19, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 1775.16 of the Code of Civil Procedure is repealed.

CHAPTER 619

An act to amend Section 19618 of, and to add Section 19542 to, the Business and Professions Code, relating to horse racing.

[Approved by Governor September 19, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 19542 is added to the Business and Professions Code, to read:

19542. Notwithstanding any other provision of law, fairs that conduct live horse racing meetings in the northern zone may allow a joint powers authority to administer and distribute purses and to achieve the purposes of Section 19606.4.

SEC. 2. Section 19618 of the Business and Professions Code is amended to read:

19618. (a) Except as provided in Article 9.2 (commencing with Section 19605), no person licensed under this chapter to conduct a racing meeting shall pay or distribute to, or on behalf of, any horse owner, any agent, or person or organization representing any horse owner or owners, purses, or any other type of consideration to, or for, the benefit of horsemen, other than that expressly provided in this chapter.

(b) Except as provided in Article 9.2 (commencing with Section 19605), no horse owner, any agent, or person or organization representing any horse owner or owners, shall receive, solicit, or obtain from any person licensed under this chapter to conduct a race

meeting, purses, or any other type of consideration to, or for, the benefit of horsemen, other than that expressly provided in this chapter.

(c) No plaque, cup, tray, ribbon, trophy, or similar award given in recognition of achievement or special event is deemed to be consideration for the purpose of subdivisions (a) and (b).

(d) Subdivisions (a) and (b) do not apply to any payment by an association in connection with any match race or special racing event.

(e) Notwithstanding subdivision (a) or (b), or any other provision of law, the horsemen's organization that represents the horsemen participating in a racing meeting and a licensed racing association may enter into an agreement which provides for the division of, and sharing by the organization and the association of, the interest earned on the association's paymaster accounts during racing meetings conducted prior to, during, or subsequent to, 1990, if both of the following conditions are satisfied:

(1) The agreement is filed with the board.

(2) The share of earned interest allocated to the horsemen's organization is used exclusively for the benefit of horsemen, including, among other purposes, purses.

(f) Notwithstanding subdivision (a) or (b), or any other provision of law, the horsemen's organization that represents the horsemen participating in a racing meeting and a licensed racing association may enter into an agreement that provides for the supplementing of purses due to the impact, if any, of activities regulated pursuant to the provisions of Chapter 5 (commencing with Section 19800) that are conducted on the association's property during a race meeting, if both of the following conditions are satisfied:

(1) The agreement is approved by the board.

(2) Any sum agreed to pursuant to this subdivision is used exclusively to supplement purses.

(g) Subdivisions (a) and (b) shall not apply to any payment by a fair in connection with promotional contests or sponsorship contributions.

CHAPTER 620

An act to amend Section 6252 of, to amend and renumber Section 6253 of, to add Sections 6252.5 and 6253 to, to add a heading as Article 1 (commencing with Section 6250) to Chapter 3.5 of, to add Article 2 (commencing with Section 6275) to Chapter 3.5 of, Division 7 of Title 1 of, and to repeal Sections 6253.1, 6256, 6256.1, 6256.2, and 6257 of, the Government Code, relating to records.

[Approved by Governor September 19, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. A heading as Article 1 (commencing with Section 6250) is added to Chapter 3.5 of Division 7 of Title 1 of the Government Code, to read:

Article 1. General Provisions

SEC. 2. Section 6252 of the Government Code is amended to read:

6252. As used in this chapter:

(a) "State agency" means every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

(b) "Local agency" includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; other local public agency; or nonprofit entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.

(c) "Person" includes any natural person, corporation, partnership, limited liability company, firm, or association.

(d) "Public agency" means any state or local agency.

(e) "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.

(f) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.

(g) "Member of the public" means any person, except a member, agent, officer, or employee of a federal, state, or local agency acting within the scope of his or her membership, agency, office, or employment.

SEC. 3. Section 6252.5 is added to the Government Code, to read:

6252.5. Notwithstanding the definition of "member of the public" in Section 6252, an elected member or officer of any state or local agency is entitled to access to public records of that agency on the same basis as any other person. Nothing in this section shall limit the ability of elected members or officers to access public records permitted by law in the administration of their duties.

This section does not constitute a change in, but is declaratory of, existing law.

SEC. 4. Section 6253 of the Government Code is amended and renumbered to read:

6253.4. (a) Every agency may adopt regulations stating the procedures to be followed when making its records available in accordance with this section.

The following state and local bodies shall establish written guidelines for accessibility of records. A copy of these guidelines shall be posted in a conspicuous public place at the offices of these bodies, and a copy of the guidelines shall be available upon request free of charge to any person requesting that body's records:

Department of Motor Vehicles
Department of Consumer Affairs
Department of Transportation
Department of Real Estate
Department of Corrections
Department of the Youth Authority
Department of Justice
Department of Insurance
Department of Corporations
Secretary of State
State Air Resources Board
Department of Water Resources
Department of Parks and Recreation
San Francisco Bay Conservation and Development Commission
State Board of Equalization
State Department of Health Services
Employment Development Department
State Department of Social Services
State Department of Mental Health
State Department of Developmental Services
State Department of Alcohol and Drug Abuse
Office of Statewide Health Planning and Development
Public Employees' Retirement System
Teachers' Retirement Board
Department of Industrial Relations
Department of General Services
Department of Veterans Affairs
Public Utilities Commission
California Coastal Commission
State Water Resources Control Board
San Francisco Bay Area Rapid Transit District
All regional water quality control boards
Los Angeles County Air Pollution Control District
Bay Area Air Pollution Control District
Golden Gate Bridge, Highway and Transportation District
Department of Toxic Substances Control

Office of Environmental Health Hazard Assessment

(b) Guidelines and regulations adopted pursuant to this section shall be consistent with all other sections of this chapter and shall reflect the intention of the Legislature to make the records accessible to the public. The guidelines and regulations adopted pursuant to this section shall not operate to limit the hours public records are open for inspection as prescribed in Section 6253.

SEC. 5. Section 6253 is added to the Government Code, to read:

6253. (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person, upon payment of fees covering direct costs of duplication, or a statutory fee, if applicable. Upon request, an exact copy shall be provided unless impracticable to do so. Computer data shall be provided in a form determined by the agency.

(c) Each agency, upon a request for a copy of records shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. As used in this section, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(d) Nothing in this chapter shall be construed to permit an agency to obstruct the inspection or copying of public records. Any

notification of denial of any request for records shall set forth the names and titles or positions of each person responsible for the denial.

(e) Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.

SEC. 6. Section 6253.1 of the Government Code is repealed.

SEC. 7. Section 6256 of the Government Code is repealed.

SEC. 8. Section 6256.1 of the Government Code is repealed.

SEC. 9. Section 6256.2 of the Government Code is repealed.

SEC. 10. Section 6257 of the Government Code is repealed.

SEC. 11. Article 2 (commencing with Section 6275) is added to Chapter 3.5 of Division 7 of Title 1 of the Government Code, to read:

Article 2. Other Exemptions from Disclosure

6275. It is the intent of the Legislature to assist members of the public and state and local agencies in identifying exemptions to the California Public Records Act. It is the intent of the Legislature that, after January 1, 1999, each addition or amendment to a statute that exempts any information contained in a public record from disclosure pursuant to subdivision (k) of Section 6254 shall be listed and described in this article. The statutes listed in this article may operate to exempt certain records, or portions thereof, from disclosure. The statutes listed and described may not be inclusive of all exemptions. The listing of a statute in this article does not itself create an exemption. Requesters of public records and public agencies are cautioned to review the applicable statute to determine the extent to which the statute, in light of the circumstances surrounding the request, exempts public records from disclosure.

6276. Records or information not required to be disclosed pursuant to subdivision (k) of Section 6254 may include, but shall not be limited to, records or information identified in statutes listed in this article.

6276.02. Accident Reports, Admissibility as Evidence, Section 315, Public Utilities Code.

Acquired Immune Deficiency Syndrome, blood test results, written authorization not necessary for disclosure, Section 121010, Health and Safety Code.

Acquired Immune Deficiency Syndrome, blood test subject, compelling identity of, Section 120975, Health and Safety Code.

Acquired Immune Deficiency Syndrome, confidentiality of personal data of patients in State Department of Health Services programs, Section 120820, Health and Safety Code.

Acquired Immune Deficiency Syndrome, confidentiality of research records, Sections 121090, 121095, 121115, and 121120, Health and Safety Code.

Acquired Immune Deficiency Syndrome, confidentiality of vaccine volunteers, Section 121280, Health and Safety Code.

Acquired Immune Deficiency Syndrome, confidentiality of information obtained in prevention programs at correctional facilities and law enforcement agencies, Sections 7552 and 7554, Penal Code.

Acquired Immune Deficiency Syndrome, confidentiality of test results of person convicted of prostitution, Section 1202.6, Penal Code.

Acquired Immune Deficiency Syndrome, disclosure of results of HIV test, penalties, Section 120980, Health and Safety Code.

Acquired Immune Deficiency Syndrome, personal information, insurers tests, confidentiality of, Section 799, Insurance Code.

Acquired Immune Deficiency Syndrome, public safety and testing disclosure, Sections 121065 and 121070, Health and Safety Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, production or discovery of records for use in criminal or civil proceedings against subject prohibited, Section 121100, Health and Safety Code.

Acquired Immune Deficiency Syndrome Public Health Records Confidentiality Act, personally identifying information confidentiality, Section 121025, Health and Safety Code.

Acquired Immune Deficiency Syndrome, test of criminal defendant pursuant to search warrant requested by victim, confidentiality of, Section 1524.1, Penal Code.

Acquired Immune Deficiency Syndrome, test results, disclosure to patient's spouse and others, Section 121015, Health and Safety Code.

Acquired Immune Deficiency Syndrome, test of person under Youth Authority, disclosure of results, Section 1768.9, Welfare and Institutions Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, definitions, Section 121125, Health and Safety Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, financial audits or program evaluations, Section 121085, Health and Safety Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, violations, Section 121100, Health and Safety Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, personally identifying research records not to be disclosed, Section 121075, Health and Safety Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, permittee disclosure, Section 121080, Health and Safety Code.

Administrative procedure, adjudicatory hearings, disclosure of ex parte communication to administrative law judge, Section 11430.40, Government Code.

Administrative procedure, adjudicatory hearings, interpreters, Section 11513, Government Code.

Adoption records, confidentiality of, Section 102730, Health and Safety Code.

6276.04. Aeronautics Act, reports of investigations and hearings, Section 21693, Public Utilities Code.

Agricultural producers marketing, access to records, Section 59616, Food and Agricultural Code.

Aiding disabled voters, Section 14282, Elections Code.

Air pollution data, confidentiality of trade secrets, Section 6254.7, Government Code, and Sections 42303.2 and 43206, Health and Safety Code.

Air toxics emissions inventory plans, protection of trade secrets, Section 44346, Health and Safety Code.

Alcohol and drug abuse records and records of communicable diseases, confidentiality of, Section 123125, Health and Safety Code.

Apiary registration information, confidentiality of, Section 29041, Food and Agricultural Code.

Arrest not resulting in conviction, disclosure or use of records, Sections 432.7 and 432.8, Labor Code.

Arsonists, registered, confidentiality of certain information, Section 457.1, Penal Code.

Artificial insemination, donor not natural father, confidentiality of records, Section 7613, Family Code.

Assessor's records, confidentiality of information in, Section 408, Revenue and Taxation Code.

Assessor's records, confidentiality of information in, Section 451, Revenue and Taxation Code.

Assessor's records, display of documents relating to business affairs or property of another, Section 408.2, Revenue and Taxation Code.

Assigned risk plans, rejected applicants, confidentiality of information, Section 11624, Insurance Code.

Attorney applicant, investigation by State Bar, confidentiality of, Section 6060.2, Business and Professions Code.

Attorney-client confidential communication, Section 6068, Business and Professions Code and Sections 952, 954, 956, 956.5, 957, 958, 959, 960, 961, and 962, Evidence Code.

Attorney, disciplinary proceedings, confidentiality prior to formal proceedings, Section 6086.1, Business and Professions Code.

Attorney, disciplinary proceeding, State Bar access to nonpublic court records, Section 6090.6, Business and Professions Code.

Attorney, investigation by State Bar, confidentiality of, Section 6168, Business and Professions Code.

Attorney, law corporation, investigation by State Bar, confidentiality of, Section 6168, Business and Professions Code.

Attorney, State Bar survey information, confidentiality of, Section 6033, Business and Professions Code.

Attorney work product confidentiality in administrative adjudication, Section 11507.6, Government Code.

Attorney, work product, confidentiality of, Section 6202, Business and Professions Code.

Attorney work product, discovery, Section 2018, Code of Civil Procedure.

Auditor General, access to records for audit purposes, Sections 10527 and 10527.1, Government Code.

Auditor General, disclosure of audit records, Section 10525, Government Code.

Automobile Insurance Claims Depository, confidentiality of information, Section 1876.3, Insurance Code.

Automobile insurance, investigation of fraudulent claims, confidential information, Section 1872.8, Insurance Code.

Automotive repair facility, fact of certification or decertification, Section 9889.47, Business and Professions Code.

Automotive repair facility, notice of intent to seek certification, Section 9889.33, Business and Professions Code.

Avocado handler transaction records, confidentiality of, Sections 44982 and 44984, Food and Agricultural Code.

6276.06. Bank and Corporation Tax, disclosure of information, Article 2 (commencing with Section 19542), Chapter 7, Part 10.2, Division 2, Revenue and Taxation Code.

Bank employees, confidentiality of criminal history information, Sections 777.5 and 4990, Financial Code.

Bank reports, confidentiality of, Section 1939, Financial Code.

Basic Property Insurance Inspection and Placement Plan, confidential reports, Section 10097, Insurance Code.

Beef Council of California, confidentiality of fee transactions information, Section 64691.1, Food and Agricultural Code.

Bids, confidentiality of, Section 10304, Public Contract Code.

Birth, death, and marriage licenses, confidential information contained in, Sections 102100 and 102110, Health and Safety Code.

Birth defects, monitoring, confidentiality of information collected, Section 103850, Health and Safety Code.

Birth, live, confidential portion of certificate, Sections 102430, 102475, 103525, and 103590, Health and Safety Code.

Blood tests, confidentiality of hepatitis and AIDS carriers, Section 1603.1, Health and Safety Code.

Blood-alcohol percentage test results, vehicular offenses, confidentiality of, Section 1804, Vehicle Code.

Bureau of Fraudulent Claims, investigations or publication of information, Section 12991, Insurance Code.

Business and professions licensee exemption for social security number, Section 30, Business and Professions Code.

6276.08. Cable television subscriber information, confidentiality of, Section 637.5, Penal Code.

California AIDS Program, personal data, confidentiality, Section 120820, Health and Safety Code.

California Apple Commission, confidentiality of lists of persons, Section 75598, Food and Agricultural Code.

California Apple Commission, confidentiality of proprietary information from producers or handlers, Section 75633, Food and Agricultural Code.

California Asparagus Commission, confidentiality of lists of producers, Section 78262, Food and Agricultural Code.

California Asparagus Commission, confidentiality of proprietary information from producers, Section 78288, Food and Agricultural Code.

California Avocado Commission, confidentiality of information from handlers, Section 67094, Food and Agricultural Code.

California Avocado Commission, confidentiality of proprietary information from handlers, Section 67104, Food and Agricultural Code.

California Cherry Commission, confidentiality of proprietary information from producers, processors, shippers, or grower-handlers, Section 76144, Food and Agricultural Code.

California Cut Flower Commission, confidentiality of lists of producers, Section 77963, Food and Agricultural Code.

California Cut Flower Commission, confidentiality of proprietary information from producers, Section 77988, Food and Agricultural Code.

California Date Commission, confidentiality of proprietary information from producers and grower-handlers, Section 77843, Food and Agricultural Code.

California Egg Commission, confidentiality of proprietary information from handlers or distributors, Section 75134, Food and Agricultural Code.

California Forest Products Commission, confidentiality of lists of persons, Section 77589, Food and Agricultural Code.

California Forest Products Commission, confidentiality of proprietary information from producers, Section 77624, Food and Agricultural Code.

California Iceberg Lettuce Commission, confidentiality of information from handlers, Section 66624, Food and Agricultural Code.

California Kiwifruit Commission, confidentiality of proprietary information from producers or handlers, Section 68104, Food and Agricultural Code.

California Navel Orange Commission, confidentiality of proprietary information from producers or handlers and lists of producers and handlers, Section 73257, Food and Agricultural Code.

California Pepper Commission, confidentiality of lists of producers and handlers, Section 77298, Food and Agricultural Code.

California Pepper Commission, confidentiality of proprietary information from producers or handlers, Section 77334, Food and Agricultural Code.

California Pistachio Commission, confidentiality of proprietary information from producers or processors, Section 69045, Food and Agricultural Code.

California Salmon Commission, confidentiality of fee transactions records, Section 76901.5, Food and Agricultural Code.

California Salmon Commission, confidentiality of request for list of commercial salmon vessel operators, Section 76950, Food and Agricultural Code.

California Seafood Council, confidentiality of fee transaction records, Section 78553, Food and Agricultural Code.

California Seafood Council, confidentiality of information on volume of fish landed, Section 78575, Food and Agricultural Code.

California Sheep Commission, confidentiality of proprietary information from producers or handlers and lists of producers, Section 76343, Food and Agricultural Code.

California State University contract law, bids, questionnaires and financial statements, Section 10763, Public Contract Code.

California Table Grape Commission, confidentiality of information from shippers, Section 65603, Food and Agricultural Code.

California Tomato Commission, confidentiality of lists of producers, handlers, and others, Section 78679, Food and Agricultural Code.

California Tomato Commission, confidentiality of proprietary information, Section 78704, Food and Agricultural Code.

California Walnut Commission, confidentiality of lists of producers, Section 77101, Food and Agricultural Code.

California Walnut Commission, confidentiality of proprietary information from producers or handlers, Section 77154, Food and Agricultural Code.

California Wheat Commission, confidentiality of proprietary information from handlers and lists of producers, Section 72104, Food and Agricultural Code.

California Wheat Commission, confidentiality of requests for assessment refund, Section 72109, Food and Agricultural Code.

California Wine Commission, confidentiality of proprietary information from producers or vintners, Section 74655, Food and Agricultural Code.

California Wine Grape Commission, confidentiality of proprietary information from producers and vintners, Section 74955, Food and Agricultural Code.

6276.10. Cancer registries, confidentiality of information, Section 103885, Health and Safety Code.

Candidate for local nonpartisan elective office, confidentiality of ballot statement, Section 13311, Elections Code.

Charter-Party Carriers, unauthorized disclosures by commission, Section 5412.5, Public Utilities Code.

Child abuse information, exchange by multidisciplinary personnel teams, Section 830, Welfare and Institutions Code.

Child abuse information reported to Department of Justice, confidentiality of, Sections 11107.5 and 11169, Penal Code.

Child abuse report and those making report, confidentiality of, Sections 11167, 11167.5, and 11174.3, Penal Code.

Child care liability insurance, confidentiality of information, Section 1864, Insurance Code.

Child concealer, confidentiality of address, Section 277, Penal Code.

Child custody investigation report, confidentiality of, Section 3111, Family Code.

Child day care facility, nondisclosure of complaint, Section 1596.853, Health and Safety Code.

Child health and disability prevention, confidentiality of health screening and evaluation results, Section 124110, Health and Safety Code.

Child support, confidentiality of income tax return, Section 3552, Family Code.

Child support, promise to pay, confidentiality of, Section 7614, Family Code.

Childhood lead poisoning prevention, confidentiality of blood lead findings, Section 124130, Health and Safety Code.

Cigarette tax, confidential information, Section 30455, Revenue and Taxation Code.

Civil actions, delayed disclosure for 30 days after complaint filed, Section 482.050, Code of Civil Procedure.

Closed sessions, meetings of local governments, pending litigation, Section 54956.9, Government Code.

Closed sessions, multijurisdictional drug enforcement agencies, Section 54957.8, Government Code.

Colorado River Board, confidential information and records, Section 12519, Water Code.

Commercial fishing licensee, confidentiality of records, Section 7923, Fish and Game Code.

Commercial fishing reports, Section 8022, Fish and Game Code.

Community care facilities, confidentiality of client information, Section 1557.5, Health and Safety Code.

Community college employee, candidate examination records, confidentiality of, Section 88093, Education Code.

Community college employee, notice and reasons for nonreemployment, confidentiality, Section 87740, Education Code.

6276.12. Conservatee, confidentiality of the conservatee's report, Section 1826, Probate Code.

Conservatee, estate plan of, confidentiality of, Section 2586, Probate Code.

Conservatee with disability, confidentiality of report, Section 1827.5, Probate Code.

Conservator, confidentiality of conservator's birthdate and driver's license number, Section 1834, Probate Code.

Conservator, supplemental information, confidentiality of, Section 1821, Probate Code.

Conservatorship, court review of, confidentiality of report, Section 1851, Probate Code.

Consumer credit report information prohibited from being furnished for employment purposes, Section 1785.18, Civil Code.

Consumer fraud investigations, access to complaints and investigations, Section 26509, Government Code.

Consumption or utilization of mineral materials, disclosure of, Section 2207.1, Public Resources Code.

Contractor, evaluations and contractor responses, confidentiality of, Section 10370, Public Contract Code.

Contractor, license applicants, evidence of financial solvency, confidentiality of, Section 7067.5, Business and Professions Code.

Controlled Substance Law violations, confidential information, Section 818.7, Government Code.

Controlled substance offenders, confidentiality of registration information, Section 11594, Health and Safety Code.

Cooperative Marketing Association, confidential information disclosed to conciliator, Sections 54453 and 54457, Food and Agricultural Code.

Coroner, inquests, subpoena duces tecum, Sections 27491.8 and 27498, Government Code.

Corporations, commissioner, publication of information filed with commissioner, Section 25605, Corporations Code.

County alcohol programs, confidential information and records, Section 11812, Health and Safety Code.

County Employees' Retirement, confidential statements and records, Section 31532, Government Code.

County mental health system, confidentiality of client information, Section 5610, Welfare and Institutions Code.

County social services, investigation of applicant, confidentiality, Section 18491, Welfare and Institutions Code.

County social services rendered by volunteers, confidentiality of records of recipients, Section 10810, Welfare and Institutions Code.

Court files, access to, restricted for 60 days, Section 1161.2, Code of Civil Procedure.

Court reporters, confidentiality of records and reporters, Section 68525, Government Code.

Court-appointed special advocates, confidentiality of information acquired or reviewed, Section 105, Welfare and Institutions Code.

Crane employers, previous business identities, confidentiality of, Section 7383, Labor Code.

Credit unions, confidentiality of investigation and examination reports, Section 14257, Financial Code.

Credit unions, confidentiality of employee criminal history information, Section 14409.2, Financial Code.

Credit unions, confidentiality of financial reports, Section 16120, Financial Code.

Criminal defendant, indigent, confidentiality of request for funds for investigators and experts, Section 987.9, Penal Code.

Criminal felon placed in diagnostic facility, confidentiality of report of diagnosis and recommendation, Sections 1203.3 and 1543, Penal Code.

Criminal offender record information, access to, Sections 11076, 11077, 11081, 13201, and 13202, Penal Code.

Criminal records information, disclosure by vendor, Section 11149.4, Penal Code.

Criminal statistics, confidentiality of information, Section 13013, Penal Code.

Crop reports, confidential, subdivision (e), Section 6254, Government Code.

Customer list of employment agency, trade secret, Section 16607, Business and Professions Code.

Customer list of telephone answering service, trade secret, Section 16606, Business and Professions Code.

6276.14. Dairy Council of California, confidentiality of ballots, Section 64155, Food and Agricultural Code.

Data processing systems contracts with state agencies, confidentiality of information, Section 11772, Government Code.

Death, report that physician's or podiatrist's negligence or incompetence may be cause, confidentiality of, Section 802.5, Business and Professions Code.

Dentist advertising and referral contract exemption, Section 650.2, Business and Professions Code.

Dentist, alcohol or dangerous drug rehabilitation and diversion, confidentiality of records, Section 1698, Business and Professions Code.

Department of Consumer Affairs licensee exemption for alcohol or dangerous drug treatment and rehabilitation records, Section 156.1, Business and Professions Code.

Developmentally disabled conservatee confidentiality of reports and records, Sections 416.8 and 416.18, Health and Safety Code.

Developmentally disabled or mentally disordered person as victim of crime, information in report filed with law enforcement agency, Section 5004.5, Welfare and Institutions Code.

Developmentally disabled person, access to information provided by family member, Section 4727, Welfare and Institutions Code.

Developmentally disabled person and person with mental illness, access to and release of information about, by protection and advocacy agency, Section 4903, Welfare and Institutions Code.

Developmentally disabled person, confidentiality of patient records, state agencies, Section 4553, Welfare and Institutions Code.

Developmentally disabled person, confidentiality of records and information, Sections 4514 and 4518, Welfare and Institutions Code.

Diesel Fuel Tax information, disclosure prohibited, Section 60609, Revenue and Taxation Code.

Disability compensation, confidential medical records, Section 2714, Unemployment Insurance Code.

Disability insurance, access to registered information, Section 789.7, Insurance Code.

Discrimination complaint to Division of Labor Standards Enforcement, confidentiality of witnesses, Section 98.7, Labor Code.

Dispute resolution participants confidentiality, Section 471.5, Business and Professions Code.

District Agricultural Association Board, records, public inspection, Section 3968, Food and Agricultural Code.

Domestic violence counselor and victim, confidentiality of communication, Sections 1037.2 and 1037.5, Evidence Code.

Driver arrested for traffic violation, notice of reexamination for evidence of incapacity, confidentiality of, Section 40313, Vehicle Code.

Driver's license file information, sale or inspection, Section 1810, Vehicle Code.

Driving school and driving instructor licensee records, confidentiality of, Section 11108, Vehicle Code.

6276.16. Educational psychologist-patient, privileged communication, Section 1010.5, Evidence Code.

Electronic and appliance repair dealer, service contractor, financial data in applications, subdivision (x), Section 6254, Government Code.

Electronic data processing, data security and confidentiality, Sections 11771 and 11772, Government Code.

Emergency Medical Services Fund, patient named, Section 1797.98c, Health and Safety Code.

Eminent domain proceedings, use of state tax returns, Section 1263.520, Code of Civil Procedure.

Employee personnel file, confidential preemployment information, Section 1198.5, Labor Code.

Employment agency, confidentiality of customer list, Section 16607, Business and Professions Code.

Employment application, nondisclosure of arrest record or certain convictions, Sections 432.7 and 432.8, Labor Code.

Employment Development Department, furnishing materials, Section 307, Unemployment Insurance Code.

Equal wage rate violation, confidentiality of complaint, Section 1197.5, Labor Code.

Equalization, State Board of, prohibition against divulging information, Section 15619, Government Code.

Escrow Agents' Fidelity Corporation, confidentiality of examination and investigation reports, Section 17336, Financial Code.

Escrow agents' confidentiality of reports on violations, Section 17414, Financial Code.

Escrow agents' confidentiality of state summary criminal history information, Section 17414.1, Financial Code.

Estate tax, confidential records and information, Sections 14251 and 14252, Revenue and Taxation Code.

Excessive rates or complaints, reports, Section 1857.9, Insurance Code.

Executive Department, closed sessions and the record of topics discussed, Sections 11126 and 11126.1, Government Code.

Executive Department, investigations and hearings, confidential nature of information acquired, Section 11183, Government Code.

6276.18. Family counselor and client, confidential information, Section 4982, Business and Professions Code.

Family Court, records, Section 1818, Family Law Code.

Farm product processor license, confidentiality of financial statements, Section 55523.6, Food and Agricultural Code.

Farm product processor licensee, confidentiality of grape purchases, Section 55601.5, Food and Agricultural Code.

Fee payer information, prohibition against disclosure by Board of Equalization and others, Section 55381, Revenue and Taxation Code.

Financial institutions, issuance of securities, reports and records of state agencies, subdivision (d), Section 6254, Government Code.

Financial records, confidentiality of, Sections 7470, 7471, and 7473, Government Code.

Financial statements of insurers, confidentiality of information received, Section 925.3, Insurance Code.

Financial statements and questionnaires, of prospective bidders for the state, confidentiality of, Section 10165, Public Contract Code.

Financial statements and questionnaires, of prospective bidders for California State University contracts, confidentiality of, Section 10763, Public Contract Code.

Firearm license applications, subdivision (u), Section 6254, Government Code.

Firearm sale or transfer, confidentiality of records, Section 12082, Penal Code.

Firefighters Service Award, confidentiality of data filed with the Board of Administration of the Public Employees' Retirement System, Section 50955, Government Code.

Fish and wildlife law enforcement agreements with other states, confidentiality of information, Section 391, Fish and Game Code.

Fish and wildlife taken illegally, public record status of records of case, Section 2584, Fish and Game Code.

Food stamps, disclosure of information, Section 18909, Welfare and Institutions Code.

Foreign marketing of agricultural products, confidentiality of financial information, Section 58577, Food and Agricultural Code.

Forest fires, anonymity of informants, Section 4417, Public Resources Code.

Foster homes, identifying information, Section 1536, Health and Safety Code.

Franchise Tax Board, access to Franchise Tax Board information by the State Department of Social Services, Section 11025, Welfare and Institutions Code.

Franchise Tax Board, auditing, confidentiality of, Section 90005, Government Code.

Franchises, applications, and reports filed with Commissioner of Corporations, disclosure and withholding from public inspection, Section 31504, Corporations Code.

Fur dealer licensee, confidentiality of records, Section 4041, Fish and Game Code.

6276.22. Genetic test results in medical record of applicant or enrollee of specified insurance plans, Sections 10123.35 and 10140.1, Insurance Code.

Governor, correspondence of and to Governor and Governor's office, subdivision (*l*), Section 6254, Government Code.

Governor, transfer of public records in control of, restrictions on public access, Section 6268, Government Code.

Grand juror, disclosure of information or indictment, Section 924, Penal Code.

Grand jury, confidentiality of request for special counsel, Section 936.7, Penal Code.

Grand jury, confidentiality of transcription of indictment or accusation, Section 938.1, Penal Code.

Group Insurance, Public Employees, Section 53202.25, Government Code.

Guardian, confidentiality of report used to check ability, Section 2342, Probate Code.

Guardianship, confidentiality of report regarding the suitability of the proposed guardian, Section 1543, Probate Code.

Guardianship, disclosure of report and recommendation concerning proposed guardianship of person or estate, Section 1513, Probate Code.

6276.24. Harmful matter, distribution, confidentiality of certain recipients, Section 313.1, Penal Code.

Hazardous substance tax information, prohibition against disclosure, Section 43651, Revenue and Taxation Code.

Hazardous waste control, business plans, public inspection, Section 25506, Health and Safety Code.

Hazardous waste control, notice of unlawful hazardous waste disposal, Section 25180.5, Health and Safety Code.

Hazardous waste control, trade secrets, disclosure of information, Sections 25511 and 25538, Health and Safety Code.

Hazardous waste control, trade secrets, procedures for release of information, Section 25358.2, Health and Safety Code.

Hazardous waste generator report, protection of trade secrets, Sections 25244.21 and 25244.23, Health and Safety Code.

Hazardous waste licenseholder disclosure statement, confidentiality of, Section 25186.5, Health and Safety Code.

Hazardous waste management facilities on Indian lands, confidentiality of privileged or trade secret information, Section 25198.4, Health and Safety Code.

Hazardous waste recycling, duties of department, Section 25170, Health and Safety Code.

Hazardous waste recycling, list of specified hazardous wastes, trade secrets, Section 25175, Health and Safety Code.

Hazardous waste recycling, trade secrets, confidential nature, Sections 25173 and 25180.5, Health and Safety Code.

Healing arts licensees, central files, confidentiality, Section 800, Business and Professions Code.

Health Care Provider Central Files, confidentiality of, Section 800, Business and Professions Code.

Health care provider disciplinary proceeding, confidentiality of documents, Section 805.1, Business and Professions Code.

Health care service plans, review of quality of care, privileged communications, Sections 1370 and 1380, Health and Safety Code.

Health facilities, patient's rights of confidentiality, Sections 128735, 128755, and 128765, Health and Safety Code.

Health facility and clinic, consolidated data and reports, confidentiality of, Section 128730, Health and Safety Code.

Health personnel, data collection by the Office of Statewide Health Planning and Development, confidentiality of information on individual licentiates, Sections 127775 and 127780, Health and Safety Code.

Health planning and development pilot projects, confidentiality of data collected, Section 128165, Health and Safety Code.

Hereditary Disorders Act, legislative finding and declaration, confidential information, Sections 124975 and 124980, Health and Safety Code.

Hereditary Disorders Act, rules, regulations, and standards, breach of confidentiality, Section 124980, Health and Safety Code.

Higher Education Employee-Employer Relations, findings of fact and recommended terms of settlement, Section 3593, Government Code.

Higher Education Employee-Employer Relations, access by Public Employment Relation Board to employer's or employee organizations records, Section 3563, Government Code.

HIV, disclosures to blood banks by department or county health officers, Section 1603.1, Health and Safety Code.

Home address of public employees and officers in Department of Motor Vehicles, records, confidentiality of, Sections 1808.2 and 1808.4, Vehicle Code.

Horse racing, horses, blood or urine test sample, confidentiality, Section 19577, Business and Professions Code.

Hospital district and municipal hospital records relating to contracts with insurers and service plans, subdivision (t), Section 6254, Government Code.

Hospital final accreditation report, subdivision (s), Section 6254, Government Code.

Housing authorities, confidentiality of rosters of tenants, Section 34283, Health and Safety Code.

Housing authorities, confidentiality of applications by prospective or current tenants, Section 34332, Health and Safety Code.

6276.26. Improper obtaining or distributing of information from Department of Motor Vehicles, Sections 1808.46 and 1808.47, Vehicle Code.

Improper governmental activities reporting, confidentiality of identity of person providing information, Section 8547.5, Government Code.

Improper governmental activities reporting, disclosure of information, Section 8547.6, Government Code.

Industrial accident reports, confidentiality of information, Section 129, Labor Code.

Industrial loan companies, confidentiality of financial information, Section 18496, Financial Code.

Industrial loan companies, confidentiality of investigation and examination reports, Section 18394, Financial Code.

In forma pauperis litigant, rules governing confidentiality of financial information, Section 68511.3, Government Code.

Initiative, referendum, recall, and other petitions, confidentiality of names of signers, Section 6253.5, Government Code.

Inspector General, Youth and Adult Correctional Agency, confidentiality of records of employee interviews, Section 6127, Penal Code.

Insurance claims analysis, confidentiality of information, Section 1875.16, Insurance Code.

Insurance Commissioner, confidential information, Sections 735.5, 1077.3, and 12919, Insurance Code.

Insurance Commissioner, informal conciliation of complaints, confidential communications, Section 1858.02, Insurance Code.

Insurance Commissioner, information from examination or investigation, confidentiality of, Sections 1215.7, 1433, and 1759.3, Insurance Code.

Insurance Commissioner, report to Legislature, confidential information, Section 12961, Insurance Code.

Insurance Commissioner, writings filed with nondisclosure, Section 855, Insurance Code.

Insurance fraud reporting, information acquired not part of public record, Section 1873.1, Insurance Code.

Insurance Holding Company System Regulatory Act, examinations, Section 1215.7, Insurance Code.

Insurance licensee, confidential information, Section 1666.5, Insurance Code.

Insurer application information, confidentiality of, Section 925.3, Insurance Code.

Insurer financial analysis ratios and examination synopses, confidentiality of, Section 933, Insurance Code.

Insurer, request for examination of, confidentiality of, Section 1067.11, Insurance Code.

Integrated Waste Management Board information, prohibition against disclosure, Section 45982, Revenue and Taxation Code.

Intervention in regulatory and ratemaking proceedings, audit of customer seeking and award, Section 1804, Public Utilities Code.

Investigative consumer reporting agency, limitations on furnishing an investigative consumer report, Section 1786.12, Civil Code.

6276.28. Joint Legislative Ethics Committee, confidentiality of reports and records, Section 8953, Government Code.

Judicial candidates, confidentiality of communications concerning, Section 12011.5, Government Code.

Jurors' lists, lists of registered voters and licensed drivers as source for, Section 197, Code of Civil Procedure.

Juvenile court proceedings to adjudge a person a dependent child of court, sealing records of, Section 389, Welfare and Institutions Code.

Juvenile criminal records, dissemination to schools, Section 828.1, Welfare and Institutions Code.

Juvenile delinquents, notification of chief of police or sheriff of escape of minor from secure detention facility, Section 1155, Welfare and Institutions Code.

Labor dispute, investigation and mediation records, confidentiality of, Section 65, Labor Code.

Lanterman-Petris-Short Act, mental health services recipients, confidentiality of information and records, mental health advocate, Sections 5540, 5541, 5542, and 5550, Welfare and Institutions Code.

Law enforcement vehicles, registration disclosure, Section 5003, Vehicle Code.

Legislative Counsel records, subdivision (m), Section 6254, Government Code.

Library circulation records and other materials, subdivision (i), Section 6254 and Section 6267, Government Code.

Life and disability insurers, actuarial information, confidentiality of, Section 10489.15, Insurance Code.

Litigation, confidentiality of settlement information, Section 68513, Government Code.

Local agency legislative body, closed sessions, disclosure of materials, Section 54956.9, Government Code.

Local government employees, confidentiality of records and claims relating to group insurance, Section 53202.25, Government Code.

Local summary criminal history information, confidentiality of, Sections 13300 and 13305, Penal Code.

Local agency legislative body, closed session, nondisclosure of minute book, Section 54957.2, Government Code.

Local agency legislative body, meeting, disclosure of agenda, Section 54957.5, Government Code.

Long-term health facilities, confidentiality of complaints against, Section 1419, Health and Safety Code.

Long-term health facilities, confidentiality of records retained by State Department of Health Services, Section 1439, Health and Safety Code.

6276.30. Major Risk Medical Insurance Program, negotiations with health plans, subdivisions (v) and (w) of Section 6254, Government Code.

Mandated blood testing and confidentiality to protect public health, prohibition against compelling identification of test subjects, Section 120975, Health and Safety Code.

Mandated blood testing and confidentiality to protect public health, unauthorized disclosures of identification of test subjects, Section 120980, Health and Safety Code.

Mandated blood testing and confidentiality to protect public health, disclosure to patient's spouse, sexual partner, needle sharer, or county health officer, Section 121015, Health and Safety Code.

Manufactured home, mobilehome, floating home, confidentiality of home address of registered owner, Section 18081, Health and Safety Code.

Marital confidential communications, Sections 980, 981, 982, 983, 984, 985, 986, and 987, Evidence Code.

Market reports, confidential, subdivision (e), Section 6254, Government Code.

Marketing of commodities, confidentiality of financial information, Section 58781, Food and Agricultural Code.

Marketing orders, confidentiality of processors or distributors' information, Section 59202, Food and Agricultural Code.

Marriage, confidential, certificate, Section 511, Family Code.

Medi-Cal Benefits Program, confidentiality of information, Section 14100.2, Welfare and Institutions Code.

Medi-Cal Benefits Program, Evaluation Committee, confidentiality of information, Section 14132.6, Welfare and Institutions Code.

Medi-Cal Benefits Program, Request of Department for Records of Information, Section 14124.89, Welfare and Institutions Code.

Medi-Cal Fraud Bureau, confidentiality of complaints, Section 12528, Government Code.

Medical information, disclosure by provider unless prohibited by patient in writing, Section 56.16, Civil Code.

Medical information, types of information not subject to patient prohibition of disclosure, Section 56.30, Civil Code.

Medical and other hospital committees and peer review bodies, confidentiality of records, Section 1157, Evidence Code.

Medical or dental licensee, action for revocation or suspension due to illness, report, confidentiality of, Section 828, Business and Professions Code.

Medical or dental licensee, disciplinary action, denial or termination of staff privileges, report, confidentiality of, Sections 805, 805.1, and 805.5, Business and Professions Code.

Meetings of state agencies, disclosure of agenda, Section 11125.1, Government Code.

Mental institution patient, notification to peace officers of escape, Section 7325.5, Welfare and Institutions Code.

Mentally abnormal sex offender committed to state hospital, confidentiality of records, Section 4135, Welfare and Institutions Code.

Mentally disordered and developmentally disabled offenders, access to criminal histories of, Section 1620, Penal Code.

Mentally disordered persons, court-ordered evaluation, confidentiality of reports, Section 5202, Welfare and Institutions Code.

Mentally disordered or mentally ill person, confidentiality of written consent to detainment, Section 5326.4, Welfare and Institutions Code.

Mentally disordered or mentally ill person, voluntarily or involuntarily detained and receiving services, confidentiality of records and information, Sections 5328, 5328.01, 5328.02, 5328.05, 5328.1, 5328.15, 5328.2, 5328.3, 5328.4, 5328.5, 5328.7, 5328.8, 5328.9, and 5330, Welfare and Institutions Code.

Mentally disordered or mentally ill person, weapons restrictions, confidentiality of information about, Section 8103, Welfare and Institutions Code.

Milk marketing, confidentiality of records, Section 61443, Food and Agricultural Code.

Milk product certification, confidentiality of, Section 62121, Food and Agricultural Code.

Milk, market milk, confidential records and reports, Section 62243, Food and Agricultural Code.

Milk product registration, confidentiality of information, Section 38946, Food and Agricultural Code.

Milk equalization pool plan, confidentiality of producers' voting, Section 62716, Food and Agricultural Code.

Mining report, confidentiality of report containing information relating to mineral production, reserves, or rate of depletion of mining operation, Section 2207, Public Resources Code.

Minor, criminal proceeding testimony closed to public, Section 859.1, Penal Code.

Minority and women's business data possessed by state agencies, confidentiality of, Section 15339.30, Government Code.

Minors, material depicting sexual conduct, records of suppliers to be kept and made available to law enforcement, Section 1309.5, Labor Code.

Misdemeanor and felony reports by police chiefs and sheriffs to Department of Justice, confidentiality of, Sections 11107 and 11107.5, Penal Code.

Monetary instrument transaction records, confidentiality of, Section 14167, Penal Code.

Missing persons' information, disclosure of, Sections 14201 and 14203, Penal Code.

Morbidity and mortality studies, confidentiality of records, Section 100330, Health and Safety Code.

Motor vehicle accident reports, disclosure, Sections 16005, 20012, and 20014, Vehicle Code.

Motor vehicles, department of, public records, exceptions, Sections 1808 to 1808.7, inclusive, Vehicle Code.

Motor vehicle insurance fraud reporting, confidentiality of information acquired, Section 1874.3, Insurance Code.

Motor vehicle liability insurer, data reported to Department of Insurance, confidentiality of, Section 11628, Insurance Code.

Multijurisdictional drug law enforcement agency, closed sessions to discuss criminal investigation, Section 54957.8, Government Code.

6276.32. Narcotic addict outpatient revocation proceeding, confidentiality of reports, Section 3152.5, Welfare and Institutions Code.

Narcotic and drug abuse patients, confidentiality of records, Section 11977, Health and Safety Code.

Native American graves, cemeteries and sacred places, records of, subdivision (r), Section 6254, Government Code.

Newspaper, radio, or television employee, nondisclosure of source of information, Section 1070, Evidence Code.

Notary public, confidentiality of application for appointment and commission, Section 8201.5, Government Code.

Nurse, alcohol or dangerous drug diversion and rehabilitation records, confidentiality of, Section 2770.12, Business and Professions Code.

Obscene matter, defense of scientific or other purpose, confidentiality of recipients, Section 311.8, Penal Code.

Occupational safety and health investigations, confidentiality of complaints and complainants, Section 6309, Labor Code.

Occupational safety and health investigations, confidentiality of trade secrets, Section 6322, Labor Code.

Official information acquired in confidence by public employee, disclosure of, Sections 1040 and 1041, Evidence Code.

Oil and gas, confidentiality of proposals for the drilling of a well, Section 3724.4, Public Resources Code.

Oil and gas, disclosure of onshore and offshore exploratory well records, Section 3234, Public Resources Code.

Oil and gas, disclosure of well records, Section 3752, Public Resources Code.

Oil and gas leases, surveys for permits, confidentiality of information, Section 6826, Public Resources Code.

Oil spill feepayer information, prohibition against disclosure, Section 46751, Revenue and Taxation Code.

Older adults receiving county services, providing information between county agencies, confidentiality of, Section 9401, Welfare and Institutions Code.

Organic food certification organization records, release of, Section 110845, Health and Safety Code, and Section 46009, Food and Agricultural Code.

Osteopathic physician and surgeon, rehabilitation and diversion records, confidentiality of, Section 2369, Business and Professions Code.

6276.34. Parole revocation proceedings, confidentiality of information in reports, Section 3063.5, Penal Code.

Passenger fishing boat licenses, records, Section 7923, Fish and Game Code.

Paternity, acknowledgement, confidentiality of records, Section 102760, Health and Safety Code.

Patient-physician confidential communication, Sections 992 and 994, Evidence Code.

Patient records, confidentiality of, Section 123135, Health and Safety Code.

Payment instrument licensee records, inspection of, Section 33206, Financial Code.

Payroll records, confidentiality of, Section 1776, Labor Code.

Peace officer personnel records, confidentiality of, Sections 832.7 and 832.8, Penal Code.

Penitential communication between penitent and clergy, Sections 1032 and 1033, Evidence Code.

Personal Income Tax, disclosure of information, Article 2 (commencing with Section 19542), Chapter 7, Part 10.2, Division 2, Revenue and Taxation Code.

Personal information, information practices act, prohibitions against disclosure by state agencies, Sections 1798.24 and 1798.75, Civil Code.

Personal information, subpoena of records containing, Section 1985.4, Code of Civil Procedure.

Personal representative, confidentiality of personal representative's birth date and driver's license number, Section 8404, Probate Code.

Personnel Administration, Department of, confidentiality of pay data furnished to, Section 19826.5, Government Code.

Petition signatures, Section 18650, Elections Code.

Petroleum supply and pricing, confidential information, Sections 25364 and 25366, Public Resources Code.

Pharmacist, alcohol or dangerous drug diversion and rehabilitation records, confidentiality of, Section 4436, Business and Professions Code.

Physical therapist or assistant, records of dangerous drug or alcohol diversion and rehabilitation, confidentiality of, Section 2667, Business and Professions Code.

Physical or mental condition or conviction of controlled substance offense, records in Department of Motor Vehicles, confidentiality of, Section 1808.5, Vehicle Code.

Physician and surgeon, rehabilitation and diversion records, confidentiality of, Section 2355, Business and Professions Code.

Physician assistant, alcohol or dangerous drug diversion and rehabilitation records, confidentiality of, Section 3534.7, Business and Professions Code.

Physician competency examination, confidentiality of reports, Section 2294, Business and Professions Code.

Physicians and surgeons, confidentiality of reports of patients with a lapse of consciousness disorder, Section 103900, Health and Safety Code.

Physician Services Account, confidentiality of patient names in claims, Section 16956, Welfare and Institutions Code.

Podiatrist, alcohol or drug diversion and rehabilitation records, confidentiality of, Section 2497.1, Business and Professions Code.

Pollution Control Financing Authority, financial data submitted to, subdivision (o), Section 6254, Government Code.

Postmortem or autopsy photos, Section 129, Code of Civil Procedure.

6276.36. Pregnancy tests by local public health agencies, confidentiality of, Section 123380, Health and Safety Code.

Pregnant women, confidentiality of blood tests, Section 125105, Health and Safety Code.

Prehospital emergency medical care, release of information, Sections 1797.188 and 1797.189, Health and Safety Code.

Prenatal syphilis tests, confidentiality of, Section 120705, Health and Safety Code.

Presiding Officer, Section 11430.40, Government Code.

Prisoners, behavioral research on, confidential personal information, Section 3515, Penal Code.

Prisoners, confidentiality of blood tests, Section 7530, Penal Code.

Prisoners, medical testing, confidentiality of records, Sections 7517 and 7540, Penal Code.

Prisoners, transfer from county facility for mental treatment and evaluation, confidentiality of written reasons, Section 4011.6, Penal Code.

Private industry wage data collected by public entity, confidentiality of, Section 6254.6, Government Code.

Private railroad car tax, confidentiality of information, Section 11655, Revenue and Taxation Code.

Probate referee, disclosure of materials, Section 8908, Probate Code.

Probation officer reports, inspection of, Section 1203.05, Penal Code.

Produce dealer, confidentiality of financial statements, Section 56254, Food and Agricultural Code.

Products liability insurers, transmission of information, Sections 1857.7 and 1857.9, Insurance Code.

Professional corporations, financial statements, confidentiality of, Section 13406, Corporations Code.

Property on loan to museum, notice of intent to preserve an interest in, not subject to disclosure, Section 1899.5, Civil Code.

Property taxation, confidentiality of change of ownership, Section 481, Revenue and Taxation Code.

Property taxation, confidentiality of property information, Section 15641, Government Code and Section 833, Revenue and Taxation Code.

Proprietary information, availability only to the director and other persons authorized by the operator and the owner, Section 2778, Public Resources Code.

Psychologist and client, confidential relations and communications, Section 2918, Business and Professions Code.

Psychotherapist-patient confidential communication, Sections 1012 and 1014, Evidence Code.

Public employees' home addresses and telephone numbers, confidentiality of, Section 6254.3, Government Code.

Public Employees' Retirement System, confidentiality of data filed by member or beneficiary with board of administration, Section 20134, Government Code.

Public school employees organization, confidentiality of proof of majority support submitted to Public Employment Relations Board, Sections 3544, 3544.1, and 3544.5, Government Code.

Public social services, confidentiality of digest of decisions, Section 10964, Welfare and Institutions Code.

Public social services, confidentiality of information regarding child abuse or elder or dependent persons abuse, Section 10850.1, Welfare and Institutions Code.

Public social services, confidentiality of information regarding eligibility, Section 10850.2, Welfare and Institutions Code.

Public social services, confidentiality of records, Section 10850, Welfare and Institutions Code.

Public social services, disclosure of information to law enforcement agencies, Section 10850.3, Welfare and Institutions Code.

Public social services, disclosure of information to law enforcement agencies regarding deceased applicant or recipient, Section 10850.7, Welfare and Institutions Code.

Public utilities, confidentiality of information, Section 583, Public Utilities Code.

Pupil, confidentiality of personal information, Section 45345, Education Code.

Pupil drug and alcohol use questionnaires, confidentiality of, Section 11605, Health and Safety Code.

Pupil, expulsion hearing, disclosure of testimony of witness and closed session of district board, Section 48918, Education Code.

Pupil, personal information disclosed to school counselor, confidentiality of, Section 49602, Education Code.

Pupil record contents, records of administrative hearing to change contents, confidentiality of, Section 49070, Education Code.

Pupil records, access authorized for specified parties, Section 49076, Education Code.

Pupil records, disclosure in hearing to dismiss or suspend school employee, Section 44944.1, Education Code.

Pupil records, release of directory information to private entities, Sections 49073 and 49073.5, Education Code.

6276.38. Radioactive materials, dissemination of information about transportation of, Section 33002, Vehicle Code.

Real estate broker, annual report to Department of Real Estate of financial information, confidentiality of, Section 10232.2, Business and Professions Code.

Real property, acquisition by state or local government, information relating to feasibility, subdivision (h), Section 6254, Government Code.

Real property, change in ownership statement, confidentiality of, Section 27280, Government Code.

Reciprocal agreements with adjoining states, Section 391, Fish and Game Code.

Records of contract purchasers, inspection by public prohibited, Section 85, Military and Veterans Code.

Registered public obligations, inspection of records of security interests in, Section 5060, Government Code.

Registration of exempt vehicles, nondisclosure of name of person involved in alleged violation, Section 5003, Vehicle Code.

Rehabilitation, Department of, confidential information, Section 19016, Welfare and Institutions Code.

Reinsurance intermediary-broker license information, confidentiality of, Section 1781.3, Insurance Code.

Rent control ordinance, confidentiality of information concerning accommodations sought to be withdrawn from, Section 7060.4, Government Code.

Report of probation officer, inspection, copies, Section 1203.05, Penal Code.

Repossession agency licensee application, confidentiality of information, Sections 7503, 7504, and 7506.5, Business and Professions Code.

Residence address in any record of Department of Housing and Community Development, confidentiality of, Section 6254.1, Government Code.

Residence address in any record of Department of Motor Vehicles, confidentiality of, Section 6254.1, Government Code, and Section 1808.21, Vehicle Code.

Residence and mailing addresses in records of Department of Motor Vehicles, confidentiality of, Section 1810.7, Vehicle Code.

Residential care facilities, confidentiality of resident information, Section 1568.08, Health and Safety Code.

Residential care facilities for the elderly, confidentiality of client information, Section 1569.315, Health and Safety Code.

Respiratory care practitioner, professional competency examination reports, confidentiality of, Section 3756, Business and Professions Code.

Restraint of trade, civil action by district attorney, confidential memorandum, Section 16750, Business and Professions Code.

Reward by governor for information leading to arrest and conviction, confidentiality of person supplying information, Section 1547, Penal Code.

6276.40. Sales and use tax, disclosure of information, Section 7056, Revenue and Taxation Code.

Savings association employees, disclosure of criminal history information, Sections 6525 and 8012, Financial Code.

Savings associations, inspection of records by shareholders, Section 6050, Financial Code.

School district governing board, disciplinary action, disclosure of pupil information, Section 35146, Education Code.

School employee, merit system examination records, confidentiality of, Section 45274, Education Code.

School employee, notice and reasons for hearing on nonreemployment of employee, confidentiality of, Sections 44948.5 and 44949, Education Code.

School meals for needy pupils, confidentiality of records, Section 49558, Education Code.

Sealed records, arrest for misdemeanor, Section 851.7, Penal Code.

Sealed records, misdemeanor convictions, Section 1203.45, Penal Code.

Sealing and destruction of arrest records, determination of innocence, Section 851.8, Penal Code.

Search warrants, special master, Section 1524, Penal Code.

Sex change, confidentiality of birth certificate, Section 103440, Health and Safety Code.

Sex offenders, registration form, Section 290, Penal Code.

Sex offenders, specimen and other information, unauthorized disclosure, Section 290.2, Penal Code.

Sexual assault forms, confidentiality of, Section 13823.5, Penal Code.

Sexual assault victim counselor and victim, confidential communication, Sections 1035.2, 1035.4, and 1035.8, Evidence Code.

Shorthand reporter's complaint, Section 8010, Business and Professions Code.

Small business information compiled by state agencies, confidentiality of, Section 15331.2, Government Code.

Small family day care homes, identifying information, Section 1596.86, Health and Safety Code.

Social security number, applicant for driver's license or identification card, disclosure of, Section 1653.5, Vehicle Code.

6276.42. State agency activities relating to unrepresented employees, subdivision (p) of Section 6254, Government Code.

State agency activities relating to providers of health care, subdivision (a) of Section 6254, Government Code.

State Auditor, access to barred records, Section 8545.2, Government Code.

State Auditor, confidentiality of records, Sections 8545, 8545.1, and 8545.3, Government Code.

State civil service employee, confidentiality of appeal to state personnel board, Section 18952, Government Code.

State civil service employees, confidentiality of reports, Section 18573, Government Code.

State civil service examination, confidentiality of application and examination materials, Section 18934, Government Code.

State Contract Act, bids, questionnaires and financial statements, Section 10165, Public Contract Code.

State Contract Act, bids, sealing, opening and reading bids, Section 10304, Public Contract Code.

State Energy Resources Conservation and Development Commission, confidentiality of proprietary information submitted to, Sections 25223 and 25321, Public Resources Code.

State hospital patients, information and records in possession of Superintendent of Public Instruction, confidentiality of, Section 56863, Education Code.

State information security officer, implementation of confidentiality policies, Section 11771, Government Code.

State Long-Term Care Ombudsman, access to government agency records, Section 9723, Welfare and Institutions Code.

State Long-Term Care Ombudsman office, confidentiality of records and files, Section 9725, Welfare and Institutions Code.

State Long-Term Care Ombudsman office, disclosure of information or communications, Section 9715, Welfare and Institutions Code.

State Lottery Evaluation Report, disclosure, Section 8880.46, Government Code.

State summary criminal history information, confidentiality of information, Sections 11105, 11105.1, 11105.3, and 11105.4, Penal Code.

Sterilization of disabled, confidentiality of evaluation report, Section 1955, Probate Code.

Strawberry marketing information, confidentiality of, Section 63124, Food and Agricultural Code.

Structural pest control licensee records relating to pesticide use, confidentiality of, Section 15205, Food and Agricultural Code.

Student driver, records of physical or mental condition, confidentiality of, Section 12661, Vehicle Code.

Student, community college, information received by school counselor, confidentiality of, Section 72621, Education Code.

Student, community college, records, limitations on release, Section 76243, Education Code.

Student, community college, record contents, records of administrative hearing to change contents, confidentiality of, Section 76232, Education Code.

Student, sexual assault on private higher education institution campus, confidentiality of information, Section 94385, Education Code.

Student, sexual assault on public college or university, confidentiality of information, Section 67385, Education Code.

Student in public college or university, record of disciplinary action for sexual assault or physical abuse, access by alleged victim, Section 67134, Education Code.

Student, release of directory information by public college or university, Section 67140, Education Code.

Sturgeon egg processors, records, Section 10004, Fish and Game Code.

6276.44. Taxpayer information, confidentiality, local taxes, subdivision (i), Section 6254, Government Code.

Tax preparer, disclosure of information obtained in business of preparing tax returns, Section 17530.5, Business and Professions Code.

Teacher, credential holder or applicant, information provided to Commission on Teacher Credentialing, confidentiality of, Section 44341, Education Code.

Teacher, certified school personnel examination results, confidentiality of, Section 44289, Education Code.

Teacher, information filed with Teachers' Retirement Board, confidentiality of, Section 22221, Education Code.

Telephone answering service customer list, trade secret, Section 16606, Business and Professions Code.

Timber yield tax, disclosure to county assessor, Section 38706, Revenue and Taxation Code.

Timber yield tax, disclosure of information, Section 38705, Revenue and Taxation Code.

Title insurers, confidentiality of notice of noncompliance, Section 12414.14, Insurance Code.

Tow truck driver, information in records of California Highway Patrol, Department of Motor Vehicles, or other agencies, confidentiality of, Sections 2431 and 2432.3, Vehicle Code.

Toxic substances, Department of, inspection of records of, Section 25152.5, Health and Safety Code.

Trade secrets, Section 1060, Evidence Code.

Trade secrets, confidentiality of, occupational safety and health inspections, Section 6322, Labor Code.

Trade secrets, disclosure of public records, Section 3426.7, Civil Code.

Trade secrets, food, drugs, cosmetics, nondisclosure, Sections 110165 and 110370, Health and Safety Code.

Trade secrets, protection by Director of the Department of Pesticide Regulation, Section 6254.2, Government Code.

Trade secrets and proprietary information relating to pesticides, confidentiality of, Sections 14022 and 14023, Food and Agricultural Code.

Trade secrets, protection by Director of Industrial Relations, Section 6396, Labor Code.

Trade secrets relating to hazardous substances, disclosure of, Sections 25358.2 and 25358.7, Health and Safety Code.

Traffic violator school licensee records, confidentiality of, Section 11212, Vehicle Code.

Traffic offense, dismissed for participation in driving school or program, record of, confidentiality of, Section 1808.7, Vehicle Code.

Transit districts, questionnaire and financial statement information in bids, Section 99154, Public Utilities Code.

Trust companies, disclosure of private trust confidential information, Section 1582, Financial Code.

6276.46. Unclaimed property, Controller records of, disclosure, Section 1582, Code of Civil Procedure.

Unemployment compensation, disclosure of confidential information, Section 2111, Unemployment Insurance Code.

Unemployment compensation, information obtained in administration of code, Section 1094, Unemployment Insurance Code.

Unemployment compensation, purposes for which use of information may be authorized, Section 1095, Unemployment Insurance Code.

Unemployment fund contributions, publication of annual tax rate, Section 989, Unemployment Insurance Code.

Unsafe working condition, confidentiality of complainant, Section 6309, Labor Code.

Use fuel tax information, disclosure prohibited, Section 9255, Revenue and Taxation Code.

Utility systems development, confidential information, subdivision (e), Section 6254, Government Code.

Vehicle registration, financial responsibility verification study, confidentiality of information, Sections 4750.2 and 4750.4, Vehicle Code.

Vehicle accident reports, disclosure of, Sections 16005, 20012, and 20014, Vehicle Code and Section 27177, Streets and Highways Code.

Vehicular offense, record of, confidentiality five years after conviction, Section 1807.5, Vehicle Code.

Veterans Affairs, Department of, confidentiality of records of contract purchasers, Section 85, Military and Veterans Code.

Veterinarian or animal health technician, alcohol or dangerous drugs diversion and rehabilitation records, confidentiality of, Section 4871, Business and Professions Code.

Victim, statements at sentencing, Section 1191.15, Penal Code.

Victims' Legal Resource Center, confidentiality of information and records retained, Section 13897.2, Penal Code.

Voter, registration by confidential affidavit, Section 2194, Elections Code.

Voter registration card, confidentiality of information contained in, Section 6254.4, Government Code.

Voting, secrecy, Section 1050, Evidence Code.

Wards and dependent children, inspection of juvenile court documents, Section 827, Welfare and Institutions Code.

6276.48. Wards and dependent children, release of description information about minor escapees, Section 828, Welfare and Institutions Code.

Wards, petition for sealing records, Section 781, Welfare and Institutions Code.

Welfare, statewide automated system work plan, confidentiality of data on individuals, Section 10818, Welfare and Institutions Code.

Wills, confidentiality of, Section 6389, Probate Code.

Winegrowers of California commission, confidentiality of producers' or vintners' proprietary information, Sections 74655 and 74955, Food and Agricultural Code.

Workers' Compensation Appeals Board, injury or illness report, confidentiality of, Section 6412, Labor Code.

Workers' compensation insurance, dividend payment to policyholder, confidentiality of information, Section 11739, Insurance Code.

Workers' compensation insurance fraud reporting, confidentiality of information, Sections 1877.3 and 1877.4, Insurance Code.

Workers' compensation insurer or rating organization, confidentiality of notice of noncompliance, Section 11754, Insurance Code.

Workers' compensation insurer, rating information, confidentiality of, Section 11752.7, Insurance Code.

Workers' compensation, notice to correct noncompliance, Section 11754, Insurance Code.

Workers' compensation, release of information to other governmental agencies, Section 11752.5, Insurance Code.

Workers' compensation, self-insured employers, confidentiality of financial information, Section 3742, Labor Code.

Workplace inspection photographs, confidentiality of, Section 6314, Labor Code.

Youth Authority, parole revocation proceedings, confidentiality of, Section 1767.6, Welfare and Institutions Code.

Youth Authority, release of information in possession of Youth Authority for offenses under Sections 676, 1764.1, and 1764.2, Welfare and Institutions Code.

Youth Authority, records, policies, and procedures, Section 1905, Welfare and Institutions Code.

Youth Authority, records, disclosure, Section 1764, Welfare and Institutions Code.

Youth Authority parolee, disclosure of personal information in revocation proceedings, Section 1767.6, Welfare and Institutions Code.

Youth service bureau, confidentiality of client records, Section 1905, Welfare and Institutions Code.

SEC. 12. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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

CHAPTER 621

An act to add Section 4846.5 to the Business and Professions Code, relating to veterinary medicine.

[Approved by Governor September 19, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 4846.5 is added to the Business and Professions Code, to read:

4846.5. (a) On or after January 1, 2002, except as provided in this section, the board shall issue renewal licenses only to those applicants that have completed a minimum of 36 hours of approved continuing education in the preceding two years.

(b) Every person renewing his or her license issued pursuant to Section 4846.4 or any person applying for relicensure or for reinstatement of his or her license to active status, shall submit proof of compliance with this section to the board certifying that he or she is in compliance with this section. Any false statement submitted pursuant to this section shall be a violation subject to Section 4831.

(c) This section shall not apply to a veterinarian's first license renewal. This section shall apply only to second and subsequent license renewals granted on or after January 1, 2002.

(d) The board shall have the right to audit the records of any applicant to verify the completion of the continuing education requirement. Applicants shall maintain records of completion of required continuing education coursework for a period as determined by the board, but not to exceed six years and shall make these records available to the board for auditing purposes upon request.

(e) A veterinarian desiring an inactive license or to restore an inactive license under Section 701, shall submit an application on a form provided by the board. In order to restore an inactive license to active status, the veterinarian shall have completed a minimum of 36 hours of approved continuing education within the last two years preceding application. The inactive license status of a veterinarian shall not deprive the board of its authority to institute or continue a disciplinary action against a licensee.

(f) Knowing misrepresentation of compliance with the requirements of this article by a veterinarian constitutes unprofessional conduct and grounds for disciplinary action or for the issuance of a citation and the imposition of a civil penalty pursuant to Section 4883.

(g) The board, in its discretion, may exempt from the continuing education requirement, any veterinarian who for reasons of health, military service, or undue hardship, cannot meet those requirements. Applications for waivers shall be submitted on a form provided by the board.

(h) Continuing education instruction shall be approved by an approval organization or group to be established by the board. Providers of continuing education shall be certified by the group.

(i) The approval group shall establish criteria by which a provider of continuing education shall be approved. The board shall initially review and approve these criteria and may review the criteria as

needed. The approval group shall monitor and approve courses and maintain and manage related records and data.

(j) The board shall adopt regulations as necessary for implementation of this section.

(k) The administration of this section may be funded through professional license fees and continuing education provider and course approval fees. The fees related to the administration of this section shall not exceed the costs of administering the corresponding provisions of this section.

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 622

An act to amend Sections 10089.40 and 10089.84 of the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 19, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 10089.40 of the Insurance Code is amended to read:

10089.40. (a) Rates established by the authority shall be actuarially sound so as to not be excessive, inadequate, or unfairly discriminatory. Rates shall be established based on the best available scientific information for assessing the risk of earthquake frequency, severity, and loss. Rates shall be equivalent for equivalent risks. Factors the board shall consider in adopting rates include, but are not limited to, the following:

(1) Location of the insured property and its proximity to earthquake faults and to other geological factors that affect the risk of earthquake or damage from earthquake.

(2) The soil type on which the insured dwelling is built.

(3) Construction type and features of the insured dwelling.

(4) Age of the insured dwelling.

(5) The presence of earthquake hazard reduction factors, including those set forth in subdivision (a) of Section 10089.2.

(b) (1) If scientific information from geologists, seismologists, or similar experts that assesses the frequency or severity of risk of earthquake is considered in setting rates or in arriving at the modeling assumptions upon which those rates are based, the information may be used to establish differentials among risks only if the information, assumptions, and methodology used are consistent with the available geophysical data and the state of the art of scientific knowledge within the scientific community.

(2) Scientific information from geologists, seismologists, or similar experts shall not be conclusive to support the establishment of different rates between the most populous rating territories in the northern and southern regions of the state unless that information, as analyzed by experts such as the United States Geological Survey, the California Division of Mines and Geology, and experts in the scientific or academic community, clearly shows a higher risk of earthquake frequency, severity, or loss between those most populous rating territories to support those differences.

(3) It is not the intent of the Legislature in adopting this subdivision to mandate a uniform statewide flat rate for California Earthquake Authority policies.

(c) The classification system established by the board shall not be adjusted or tempered in any way to provide rates lower than are justified for classifications that present a high risk of loss or higher than are justified for classifications that present a low risk of loss.

(d) Policyholders who have retrofitted their homes to withstand earthquake shake damage according to standards and to the extent set by the board shall enjoy a premium discount or credit of 5 percent on the authority-issued policy of residential earthquake coverage. For residential dwellings, the 5-percent discount shall be applicable if the dwelling, at a minimum, meets the following requirements: the dwelling was built prior to 1979, is tied to the foundation, has cripple walls braced with plywood or its equivalent, and the water heater is secured to the building frame. For mobilehomes, the 5-percent discount shall be applicable if the mobilehome, at a minimum, is reinforced by an earthquake resistant bracing system certified by the Department of Housing and Community Development. The board may approve a premium discount or credit above 5 percent, as long as the discount or credit is determined actuarially sound by the authority.

(e) All rates shall be approved by the commissioner prior to their use.

SEC. 2. Section 10089.84 of the Insurance Code is amended to read:

10089.84. This chapter shall remain in effect 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. Any case referred to mediation by the department prior to January 1, 2000, shall be mediated under this chapter whether or not the mediation has been completed prior to January 1, 2000. No later than August 1, 1998, the commissioner shall report to the Governor and the Legislature on whether the pilot program should be extended, expanded, terminated, or otherwise modified and shall include specific findings regarding the use of the program by insureds and insurers.

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 for the Department of Insurance to continue without disruption to provide mediation services to Northridge earthquake victims who are policyholders seeking resolution of outstanding issues on claims through mediation instead of costly litigation, and to clarify other issues relating to earthquake insurance, it is necessary for this act to take effect immediately.

CHAPTER 623

An act to add Sections 7056.5 and 19542.1 to the Revenue and Taxation Code, and to add Section 13018 to the Unemployment Insurance Code, relating to taxation.

[Approved by Governor September 19, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. This act shall be known and may be cited as the Taxpayer Browsing Protection Act.

SEC. 2. Section 7056.5 is added to the Revenue and Taxation Code, to read:

7056.5. (a) Except as otherwise provided by this article or other express provision of law, the information furnished or secured pursuant to this part shall be used solely for the purpose of administering the tax laws or other laws administered by the person or agency obtaining it. Any willful unauthorized inspection or unwarranted disclosure or use of the information by the person or agency, or the employees and officers thereof, is a misdemeanor. For purposes of this section, "inspection" means any examination of confidential information furnished or secured pursuant to this part.

(b) The board shall notify a taxpayer of any known incidents of willful unauthorized inspection or unwarranted disclosure or use of the taxpayer's confidential tax records, but only if criminal charges

have been filed for the willful unauthorized inspection or unwarranted disclosure.

SEC. 3. Section 19542.1 is added to the Revenue and Taxation Code, to read:

19542.1. (a) Except as otherwise provided by this article, it shall be unlawful for any person described in Section 19542 to willfully inspect any confidential information furnished or secured pursuant to this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001). For purposes of this section, "inspection" means any examination of confidential information. Any willful unauthorized inspection or unwarranted disclosure or use of confidential information by the persons described in Section 19542 is a misdemeanor.

(b) The Franchise Tax Board shall notify a taxpayer of any known incidents of willful unauthorized inspection or unwarranted disclosure or use of his or her confidential tax records, but only if criminal charges have been filed for the willful unauthorized inspection or unwarranted disclosure.

SEC. 4. Section 13018 is added to the Unemployment Insurance Code, to read:

13018. (a) Except as otherwise provided by this division or other express provision of law, the information furnished or secured pursuant to this division shall be used solely for the purpose of administering the tax laws or other laws administered by the person or agency obtaining it. Any willful unauthorized inspection or unwarranted disclosure or use of the information by the person or agency, or the employees and officers thereof, is a misdemeanor. For purposes of this section, "inspection" means any examination of confidential information furnished or secured pursuant to this division.

(b) The department shall notify a taxpayer of any known incidents of willful unauthorized inspection or unwarranted disclosure or use of the taxpayer's confidential tax records, but only if criminal charges have been filed for the willful unauthorized inspection or unwarranted disclosure.

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 624

An act to amend Section 138.7 of the Labor Code, relating to workers' compensation.

[Approved by Governor September 19, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. It is the intent of the Legislature in enacting this act to further the purposes of Section 1 of Article I of the California Constitution, which establishes the right of privacy of all Californians, while protecting the right of the press to access public records in order to perform its constitutional role of monitoring government institutions on behalf of the public these institutions serve.

SEC. 2. Section 138.7 of the Labor Code is amended 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.

However, individually identifiable information shall not be provided to any person or public or private entity who is not a party to the claim unless that person identifies himself or herself or that public or private entity identifies itself and states the reason for making the request. The administrative director may require the person or public or private entity making the request to produce information to verify that the name and address of the requester is valid and correct. If the purpose of the request is related to preemployment screening, the administrative director shall notify the person about whom the information is requested that the information was provided and shall include the following in 12-point type:

"IT MAY BE A VIOLATION OF FEDERAL AND STATE LAW TO DISCRIMINATE AGAINST A JOB APPLICANT BECAUSE THE APPLICANT HAS FILED A CLAIM FOR WORKERS' COMPENSATION BENEFITS."

Any residence address is confidential and shall not be disclosed to any person or public or private entity except to a party to the claim, a law enforcement agency, an office of a district attorney, any person for a journalistic purpose, or other governmental agency.

Nothing in this paragraph shall be construed to prohibit the use of individually identifiable information for purposes of identifying bona fide lien claimants.

(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.

SEC. 3. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

CHAPTER 625

An act to amend Section 3765 of the Business and Professions Code, and to add Sections 1596.798 and 1596.8661 to the Health and Safety Code, relating to child day care facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 19, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 3765 of the Business and Professions Code is amended to read:

3765. This act does not prohibit any of the following activities:

(a) The performance of respiratory care which is an integral part of the program of study by students enrolled in approved respiratory therapy training programs.

(b) Self-care by the patient or the gratuitous care by a friend or member of the family who does not represent or hold himself or herself out to be a respiratory care practitioner licensed under the provisions of this chapter.

(c) The respiratory care practitioner from performing advances in the art and techniques of respiratory care learned through formal or specialized training.

(d) The performance of respiratory care by paramedical personnel who have been formally trained in these modalities and are duly licensed under the provisions of an act pertaining to their speciality.

(e) Respiratory care services in case of an emergency. "Emergency," as used in this subdivision, includes an epidemic or public disaster.

(f) Persons from engaging in cardiopulmonary research.

(g) Formally trained licensees and staff of child day care facilities from administering to a child inhaled medication as defined in Section 1596.798 of the Health and Safety Code.

SEC. 2. Section 1596.798 is added to the Health and Safety Code, to read:

1596.798. (a) Notwithstanding any other provision of law, licensees and staff of a child day care facility may administer inhaled medication to a child if all of the following requirements are met:

(1) The licensee or staff person has been provided with written authorization from the minor's parent or legal guardian to administer inhaled medication and authorization to contact the child's health care provider. The authorization shall include the telephone number and address of the minor's parent or legal guardian.

(2) The licensee or staff person complies with specific written instructions from the child's physician to which all of the following shall apply:

(A) The instructions shall contain all of the following information:

(i) Specific indications for administering the medication pursuant to the physician's prescription.

(ii) Potential side effects and expected response.

(iii) Dose-form and amount to be administered pursuant to the physician's prescription.

(iv) Actions to be taken in the event of side effects or incomplete treatment response pursuant to the physician's prescription.

(v) Instructions for proper storage of the medication.

(vi) The telephone number and address of the child's physician.

(B) The instructions shall be updated annually.

(3) The licensee or staff person that administers the inhaled medication to the child shall record each instance and provide a record to the minor's parent or legal guardian on a daily basis.

(4) Beginning January 1, 2000, a licensee or staff person who obtains or renews a pediatric first aid certificate pursuant to Section 1596.866 shall complete formal training designed to provide instruction in administering inhaled medication to children with respiratory needs. This training shall include, but not be limited to, training in the general use of nebulizer equipment and inhalers, how to clean the equipment, proper storage of inhaled medication, how a child should respond to inhaled medication, what to do in cases of emergency, how to identify side effects of the medication, and when to notify a parent or legal guardian or physician. This training shall be a component in the pediatric first aid certificate requirement as provided in Section 1596.8661.

(5) For a specified child, the licensee or staff person who administers inhaled medication has been instructed to administer inhaled medication by the child's parent or guardian.

(6) Beginning January 1, 2000, any training materials pertaining to nebulizer care that licensees or staff receive in the process of obtaining or renewing a pediatric first aid certificate pursuant to paragraph (4) shall be kept on file at the child care facility. The materials shall be made available to a licensee or staff person who administers inhaled medication. This requirement shall only apply to the extent that training materials are made available to licensees or

staff who obtain or renew a pediatric first aid certificate pursuant to paragraph (4).

(b) For purposes of this section, inhaled medication shall refer to medication prescribed for the child to control lung-related illness, including, but not limited to, local held nebulizers.

(c) Nothing in this section shall be interpreted to require a certificated teacher who provides day care pursuant to Chapter 2 (commencing with Section 8200) of Part 6 of the Education Code in a public school setting to administer inhaled medication.

SEC. 3. Section 1596.8661 is added to the Health and Safety Code, to read:

1596.8661. (a) For purposes of the training required pursuant to paragraph (4) of subdivision (a) of Section 1596.798, pediatric first aid training pursuant to Section 1596.866 shall include a component of training in the administration of inhaled medication described in paragraph (4) of subdivision (a) of Section 1596.798.

(b) The Emergency Medical Services Authority shall establish, consistent with Section 1797.191, minimum standards for a component of pediatric first aid training that satisfies the requirements of paragraph (4) of subdivision (a) of Section 1596.798. For purposes of this subdivision, the Emergency Medical Services Authority is encouraged to consult with organizations and providers with expertise in administering inhaled medication and nebulizer care, including, but not limited to, the American Lung Association, respiratory therapists, and others.

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 that children with respiratory problems may be accepted into child care homes and facilities as soon as possible, and may receive assistance from child care providers in administering inhaled medication, it is necessary that this act take effect immediately.

CHAPTER 626

An act to amend Sections 69560, 69561, 69562, 69563, 69564, and 69566 of, and to repeal Section 69567 of, the Education Code, relating to the Student Opportunity and Access Program.

[Approved by Governor September 19, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 69560 of the Education Code is amended to read:

69560. The Legislature finds and declares all of the following:

(a) Lack of information about postsecondary educational opportunities and low achievement levels are primary barriers to a college education for students from schools that have low eligibility and college participation rates.

(b) The Student Opportunity and Access Program, initiated in 1978 to increase postsecondary educational opportunities, has been successful in meeting its goals to increase the availability of information, improve students' access to higher education by raising their achievement levels, and reduce the duplication of services by coordinating outreach efforts.

(c) The intersegmental consortium nature of the program has proven to be a highly effective mechanism in coordinating existing services and in fostering the cooperation of the various education segments involved.

(d) An essential core of state funding for the program is required to maintain its intersegmental character, which has generated better communication, understanding, and teamwork resulting in an impact enhanced by the collective effort, while minimizing duplication of services in a geographic area.

(e) The anticipated growth in the state's schoolage population indicates an increasing demand for services provided by the program to assist students to compete successfully for admission to postsecondary educational institutions.

(f) Salaries for college students of low-income backgrounds to provide informational and tutorial help for students from schools that have low eligibility and college participation rates is a cost-effective method of increasing access and of providing student financial aid.

SEC. 2. Section 69561 of the Education Code is amended to read:

69561. (a) The Student Opportunity and Access Program is administered by the Student Aid Commission.

(b) The Student Aid Commission may apportion funds on a progress payment schedule for the support of projects designed to increase the accessibility of postsecondary educational opportunities for any of the following elementary and secondary school students:

(1) Students who are from low-income families.

(2) Students who would be the first in their families to attend college.

(3) Students who are from schools or geographic regions with documented low-eligibility or college participation rates.

(c) These projects shall primarily do all of the following:

(1) Increase the availability of information for these students on the existence of postsecondary schooling and work opportunities.

(2) Raise the achievement levels of these students so as to increase the number of high school graduates eligible to pursue postsecondary learning opportunities.

(d) Projects may assist community college students in transferring to four-year institutions, to the extent that project resources are available.

(e) Projects may provide assistance to low-income fifth and sixth grade students and their parents in order to implement outreach efforts designed to use the future availability of financial assistance as a means of motivating students to stay in school and complete college preparatory courses.

(f) Each project shall be proposed and operated through a consortium that involves at least one secondary school district office, at least one four-year college or university, at least one community college, and at least one of the following agencies:

(1) A nonprofit educational, counseling, or community agency.

(2) A private vocational or technical school accredited by a national, state, or regional accrediting association recognized by the United States Department of Education.

(g) The commission, in awarding initial project grants, shall give priority to proposals developed by more than three eligible agencies. Projects shall be located throughout the state in order to provide access to program services in rural, urban, and suburban areas.

(h) The governing board of each project, comprising at least one representative from each entity in the consortium, shall establish management policy, provide direction to the project director, set priorities for budgetary decisions that reflect the specific needs of the project, and assume responsibility for maintaining the required level of matching funds, including solicitations from the private sector and corporate sources.

(i) Prior to receiving a project grant, each consortium shall conduct a planning process and submit a comprehensive project proposal to include, but not be limited to, the following information:

(1) The agencies participating in the project.

(2) The students to be served by the project.

(3) The ways in which the project will reduce duplication and related costs.

(4) The methods for assessing the project's impact.

(j) Each project shall include the direct involvement of secondary school staff in the daily operations of the project, with preference in funding to those projects that effectively integrate the objectives of the Student Opportunity and Access Program with those of the school district in providing services that are essential to preparing students for postsecondary education.

(k) Each project shall maintain within the project headquarters a comprehensive student-specific information system on students receiving services through the program in grades 11 and 12 at secondary schools within the participating districts. This information shall be maintained in a manner consistent with the law relating to pupil records.

(*l*) At least 30 percent or the equivalent of each project grant shall be allocated for stipends to peer advisers and tutors who meet all of the following criteria:

(1) Work with secondary school students.

(2) Are currently enrolled in a college or other postsecondary school as an undergraduate or graduate student.

(3) Have demonstrated financial need for the stipend.

(m) Each project should work cooperatively with other projects in the program and with the commission to establish viable student services and sound administrative procedures and to ensure coordination of the activities of the project with existing educational opportunity programs. The Student Aid Commission may develop additional regulations regarding the awarding of project grants and criteria for evaluating the effectiveness of the individual projects.

SEC. 3. Section 69562 of the Education Code is amended to read:

69562. The Student Aid Commission shall establish a 12-member project grant advisory committee to advise project directors and the commission on the development and operation of the projects, and consisting of the following:

(a) Three representatives of outreach programs, representing the University of California, the California State University, and the California Community Colleges, appointed by their respective governing boards.

(b) One representative of private colleges and universities, appointed by the Association of California Independent Colleges and Universities.

(c) One representative of the California Postsecondary Education Commission, appointed by the commission.

(d) Two secondary school staff, appointed by the Superintendent of Public Instruction.

(e) Two persons representing the general public, one appointed by the Speaker of the Assembly and the other by the Senate Rules Committee.

(f) Two postsecondary students, both appointed annually by the California Postsecondary Education Commission.

(g) One college campus financial aid officer, appointed by the commission.

SEC. 4. Section 69563 of the Education Code is amended to read:

69563. The California Postsecondary Education Commission shall periodically review and evaluate the Student Opportunity and Access Program as part of the commission's regular assessment of student academic development programs in the state. The commission shall include in the evaluation an assessment of the admission, progress, retention, and graduation of program participants from postsecondary institutions.

SEC. 5. Section 69564 of the Education Code is amended to read:

69564. Allocation of any funds appropriated for purposes of this article shall be limited to those consortia meeting requirements of

this article who will provide equal matching resources from existing or budgeted increases in federal, state, local, and private funds. It shall be the goal of the program that the total resources provided by the Student Opportunity and Access Program shall match state funding on at least a 1.5 to 1 ratio. Any new projects approved through expansion of the program shall provide equal matching resources for the first three years of operation and shall be encouraged to increase the matching resources to a 1.5 to 1 ratio with the state grant thereafter.

SEC. 6. Section 69566 of the Education Code is amended to read:

69566. It is the intent of the Legislature that funding for the purposes of this article be appropriated in the annual Budget Act.

SEC. 7. Section 69567 of the Education Code is repealed.

CHAPTER 627

An act to add Section 66207 to the Education Code, relating to postsecondary education.

[Approved by Governor September 19, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 66207 is added to the Education Code, to read:

66207. The Regents of the University of California are requested to, and the Trustees of the California State University shall, upon the request of an applicant for admission, disclose information regarding the methodology used to adjust an applicant's grade point average.

CHAPTER 628

An act to amend Section 9606 of the Public Utilities Code, relating to public utilities.

[Approved by Governor September 19, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 9606 of the Public Utilities Code is amended to read:

9606. All city-owned electric utilities shall report on the periodic bill the amount expected to be transferred from the utility to the

general fund, and to any special funds, of the city on a no less than annual basis.

CHAPTER 629

An act to amend Section 190.2 of the Penal Code, relating to murder.

[Approved by Governor September 19, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. It is the intent of the Legislature in enacting subparagraph (M) of paragraph (17) of subdivision (a) of Section 190.2 to create a statutory exception to the "independent purpose" requirement of People v. Weidert (1985) 39 Cal. 3d 836 and People v. Green (1980) 27 Cal. 3d 1, for the special circumstances of kidnapping and arson, when specific intent to kill is proven.

SEC. 2. Section 190.2 of the Penal Code is amended to read:

190.2. (a) The penalty for a defendant who is found guilty of murder in the first degree is death or imprisonment in the state prison for life without the possibility of parole if one or more of the following special circumstances has been found under Section 190.4 to be true:

(1) The murder was intentional and carried out for financial gain.

(2) The defendant was convicted previously of murder in the first or second degree. For the purpose of this paragraph, an offense committed in another jurisdiction, which if committed in California would be punishable as first or second degree murder, shall be deemed murder in the first or second degree.

(3) The defendant, in this proceeding, has been convicted of more than one offense of murder in the first or second degree.

(4) The murder was committed by means of a destructive device, bomb, or explosive planted, hidden, or concealed in any place, area, dwelling, building, or structure, and the defendant knew, or reasonably should have known, that his or her act or acts would create a great risk of death to one or more human beings.

(5) The murder was committed for the purpose of avoiding or preventing a lawful arrest, or perfecting or attempting to perfect, an escape from lawful custody.

(6) The murder was committed by means of a destructive device, bomb, or explosive that the defendant mailed or delivered, attempted to mail or deliver, or caused to be mailed or delivered, and the defendant knew, or reasonably should have known, that his or her act or acts would create a great risk of death to one or more human beings.

(7) The victim was a peace officer, as defined in Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37, 830.4, 830.5, 830.6, 830.10, 830.11, or 830.12, who, while engaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was a peace officer engaged in the performance of his or her duties; or the victim was a peace officer, as defined in the above-enumerated sections, or a former peace officer under any of those sections, and was intentionally killed in retaliation for the performance of his or her official duties.

(8) The victim was a federal law enforcement officer or agent who, while engaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was a federal law enforcement officer or agent engaged in the performance of his or her duties; or the victim was a federal law enforcement officer or agent, and was intentionally killed in retaliation for the performance of his or her official duties.

(9) The victim was a firefighter, as defined in Section 245.1, who, while engaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was a firefighter engaged in the performance of his or her duties.

(10) The victim was a witness to a crime who was intentionally killed for the purpose of preventing his or her testimony in any criminal or juvenile proceeding, and the killing was not committed during the commission or attempted commission, of the crime to which he or she was a witness; or the victim was a witness to a crime and was intentionally killed in retaliation for his or her testimony in any criminal or juvenile proceeding. As used in this paragraph, "juvenile proceeding" means a proceeding brought pursuant to Section 602 or 707 of the Welfare and Institutions Code.

(11) The victim was a prosecutor or assistant prosecutor or a former prosecutor or assistant prosecutor of any local or state prosecutor's office in this or any other state, or of a federal prosecutor's office, and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(12) The victim was a judge or former judge of any court of record in the local, state, or federal system in this or any other state, and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(13) The victim was an elected or appointed official or former official of the federal government, or of any local or state government of this or any other state, and the killing was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(14) The murder was especially heinous, atrocious, or cruel, manifesting exceptional depravity. As used in this section, the phrase "especially heinous, atrocious, or cruel, manifesting exceptional depravity" means a conscienceless or pitiless crime that is unnecessarily torturous to the victim.

(15) The defendant intentionally killed the victim by means of lying in wait.

(16) The victim was intentionally killed because of his or her race, color, religion, nationality, or country of origin.

(17) The murder was committed while the defendant was engaged in, or was an accomplice in, the commission of, attempted commission of, or the immediate flight after committing, or attempting to commit, the following felonies:

(A) Robbery in violation of Section 211 or 212.5.

(B) Kidnapping in violation of Section 207, 209, or 209.5.

(C) Rape in violation of Section 261.

(D) Sodomy in violation of Section 286.

(E) The performance of a lewd or lascivious act upon the person of a child under the age of 14 years in violation of Section 288.

(F) Oral copulation in violation of Section 288a.

(G) Burglary in the first or second degree in violation of Section 460.

(H) Arson in violation of subdivision (b) of Section 451.

(I) Train wrecking in violation of Section 219.

(J) Mayhem in violation of Section 203.

(K) Rape by instrument in violation of Section 289.

(L) Carjacking, as defined in Section 215.

(M) To prove the special circumstances of kidnapping in subparagraph (B), or arson in subparagraph (H), if there is specific intent to kill, it is only required that there be proof of the elements of those felonies. If so established, those two special circumstances are proven even if the felony of kidnapping or arson is committed primarily or solely for the purpose of facilitating the murder.

(18) The murder was intentional and involved the infliction of torture.

(19) The defendant intentionally killed the victim by the administration of poison.

(20) The victim was a juror in any court of record in the local, state, or federal system in this or any other state, and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(21) The murder was intentional and perpetrated by means of discharging a firearm from a motor vehicle, intentionally at another person or persons outside the vehicle with the intent to inflict death. For purposes of this paragraph, "motor vehicle" means any vehicle as defined in Section 415 of the Vehicle Code.

(b) Unless an intent to kill is specifically required under subdivision (a) for a special circumstance enumerated therein, an

actual killer, as to whom the special circumstance has been found to be true under Section 190.4, need not have had any intent to kill at the time of the commission of the offense which is the basis of the special circumstance in order to suffer death or confinement in the state prison for life without the possibility of parole.

(c) Every person, not the actual killer, who, with the intent to kill, aids, abets, counsels, commands, induces, solicits, requests, or assists any actor in the commission of murder in the first degree shall be punished by death or imprisonment in the state prison for life without the possibility of parole if one or more of the special circumstances enumerated in subdivision (a) has been found to be true under Section 190.4.

(d) Notwithstanding subdivision (c), every person, not the actual killer, who, with reckless indifference to human life and as a major participant, aids, abets, counsels, commands, induces, solicits, requests, or assists in the commission of a felony enumerated in paragraph (17) of subdivision (a) which results in the death of some person or persons, and who is found guilty of murder in the first degree therefor, shall be punished by death or imprisonment in the state prison for life without the possibility of parole if a special circumstance enumerated in paragraph (17) of subdivision (a) has been found to be true under Section 190.4.

The penalty shall be determined as provided in this section and Sections 190.1, 190.3, 190.4, and 190.5.

SEC. 3. Section 1 of this act affects an initiative statute and shall become effective only when submitted to, and approved by, the voters of California, pursuant to subdivision (c) of Section 10 of Article II of the California Constitution.

CHAPTER 630

An act to add Section 1054.8 to the Penal Code, relating to criminal procedure.

[Approved by Governor September 19, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 1054.8 is added to the Penal Code, to read:

1054.8. (a) No prosecuting attorney, attorney for the defendant, or investigator for either the prosecution or the defendant shall interview, question, or speak to a victim or witness whose name has been disclosed by the opposing party pursuant to Section 1054.1 or 1054.3 without first clearly identifying himself or herself, identifying the full name of the agency by whom he or she is employed, and identifying whether he or she represents, or has been retained by, the

prosecution or the defendant. If the interview takes place in person, the party shall also show the victim or witness a business card, official badge, or other form of official identification before commencing the interview or questioning.

(b) Upon a showing that a person has failed to comply with this section, a court may issue any order authorized by Section 1054.5.

CHAPTER 631

An act to amend Section 186.22a of the Penal Code, relating to criminal street gangs.

[Approved by Governor September 19, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 186.22a of the Penal Code is amended to read:

186.22a. (a) Every building or place used by members of a criminal street gang for the purpose of the commission of the offenses listed in subdivision (e) of Section 186.22 or any offense involving dangerous or deadly weapons, burglary, or rape, and every building or place wherein or upon which that criminal conduct by gang members takes place, is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private nuisance.

(b) Any action for injunction or abatement filed pursuant to subdivision (a), including an action filed by the Attorney General, shall proceed according to the provisions of Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code, except that all of the following shall apply:

(1) The court shall not assess a civil penalty against any person unless that person knew or should have known of the unlawful acts.

(2) No order of eviction or closure may be entered.

(3) All injunctions issued shall be limited to those necessary to protect the health and safety of the residents or the public or those necessary to prevent further criminal activity.

(4) Suit may not be filed until 30-day notice of the unlawful use or criminal conduct has been provided to the owner by mail, return receipt requested, postage prepaid, to the last known address.

(c) Whenever an injunction is issued pursuant to subdivision (a), or Section 3479 of the Civil Code, to abate gang activity constituting a nuisance, the Attorney General may maintain an action for money damages on behalf of the community or neighborhood injured by that nuisance. Any money damages awarded shall be paid by or collected from assets of the criminal street gang or its members that

were derived from the criminal activity being abated or enjoined. Only persons who knew or should have known of the unlawful acts shall be personally liable for the payment of the damages awarded. In a civil action for damages brought pursuant to this subdivision, the Attorney General may use, but is not limited to the use of, the testimony of experts to establish damages suffered by the community or neighborhood injured by the nuisance. The damages recovered pursuant to this subdivision shall be deposited into a separate segregated fund for payment to the governing body of the city or county in whose political subdivision the community or neighborhood is located, and that governing body shall use those assets solely for the benefit of the community or neighborhood that has been injured by the nuisance.

(d) No nonprofit or charitable organization which is conducting its affairs with ordinary care or skill, and no governmental entity, shall be abated pursuant to subdivisions (a) and (b).

(e) Nothing in this chapter shall preclude any aggrieved person from seeking any other remedy provided by law.

(f) (1) Any firearm, ammunition which may be used with the firearm, or any deadly or dangerous weapon which is owned or possessed by a member of a criminal street gang for the purpose of the commission of any of the offenses listed in subdivision (e) of Section 186.22, or the commission of any burglary or rape, may be confiscated by any law enforcement agency or peace officer.

(2) In those cases where a law enforcement agency believes that the return of the firearm, ammunition, or deadly weapon confiscated pursuant to this subdivision, is or will be used in criminal street gang activity or that the return of the item would be likely to result in endangering the safety of others, the law enforcement agency shall initiate a petition in the superior court to determine if the item confiscated should be returned or declared a nuisance.

(3) No firearm, ammunition, or deadly weapon shall be sold or destroyed unless reasonable notice is given to its lawful owner if his or her identity and address can be reasonably ascertained. The law enforcement agency shall inform the lawful owner, at that person's last known address by registered mail, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing and that the failure to respond shall result in a default order forfeiting the confiscated firearm, ammunition, or deadly weapon as a nuisance.

(4) If the person requests a hearing, the court clerk shall set a hearing no later than 30 days from receipt of that request. The court clerk shall notify the person, the law enforcement agency involved, and the district attorney of the date, time, and place of the hearing.

(5) At the hearing, the burden of proof is upon the law enforcement agency or peace officer to show by a preponderance of the evidence that the seized item is or will be used in criminal street gang activity or that return of the item would be likely to result in

endangering the safety of others. All returns of firearms shall be subject to subdivision (d) of Section 12072.

(6) If the person does not request a hearing within 30 days of the notice or the lawful owner cannot be ascertained, the law enforcement agency may file a petition that the confiscated firearm, ammunition, or deadly weapon be declared a nuisance. If the items are declared to be a nuisance, the law enforcement agency shall dispose of the items as provided in Section 12028.

CHAPTER 632

An act to add Section 912.1 to the Welfare and Institutions Code, relating to the Department of the Youth Authority.

[Approved by Governor September 19, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 912.1 is added to the Welfare and Institutions Code, to read:

912.1. (a) The Department of the Youth Authority shall present to each county, not more frequently than monthly, a statement of per capita institutional cost.

(b) As used in this section, "per capita institutional cost" means the lesser of (1) the current per capita institutional cost of the department or (2) the per capita institutional cost the department charged counties pursuant to Section 912.5 as of January 1, 1997.

CHAPTER 633

An act to amend Sections 7028.6, 7030, and 7048 of the Business and Professions Code, relating to contractors.

[Approved by Governor September 19, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 7028.6 of the Business and Professions Code is amended to read:

7028.6. The Registrar of Contractors is hereby empowered to issue citations containing orders of abatement and civil penalties against persons acting in the capacity of or engaging in the business of a contractor within this state without having a license in good

standing to so act or engage or a failure to maintain the notice required in Section 7048.

SEC. 2. Section 7030 of the Business and Professions Code is amended to read:

7030. (a) Every person licensed pursuant to this chapter shall include the following statement in at least 10-point type on all written contracts with respect to which the person is a prime contractor:

"Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826."

(b) At the time of making a bid or prior to entering into a contract to perform work on residential property with four or fewer units, whichever occurs first, a contractor shall provide the following notice in capital letters in at least 10-point roman boldface type or in contrasting red print in at least 8-point roman boldface type:

"STATE LAW REQUIRES ANYONE WHO CONTRACTS TO DO CONSTRUCTION WORK TO BE LICENSED BY THE CONTRACTORS' STATE LICENSE BOARD IN THE LICENSE CATEGORY IN WHICH THE CONTRACTOR IS GOING TO BE WORKING—IF THE TOTAL PRICE OF THE JOB IS $500 OR MORE (INCLUDING LABOR AND MATERIALS).

LICENSED CONTRACTORS ARE REGULATED BY LAWS DESIGNED TO PROTECT THE PUBLIC. IF YOU CONTRACT WITH SOMEONE WHO DOES NOT HAVE A LICENSE, THE CONTRACTORS' STATE LICENSE BOARD MAY BE UNABLE TO ASSIST YOU WITH A COMPLAINT. YOUR ONLY REMEDY AGAINST AN UNLICENSED CONTRACTOR MAY BE IN CIVIL COURT, AND YOU MAY BE LIABLE FOR DAMAGES ARISING OUT OF ANY INJURIES TO THE CONTRACTOR OR HIS OR HER EMPLOYEES.

YOU MAY CONTACT THE CONTRACTORS' STATE LICENSE BOARD TO FIND OUT IF THIS CONTRACTOR HAS A VALID LICENSE. THE BOARD HAS COMPLETE INFORMATION ON THE HISTORY OF LICENSED CONTRACTORS, INCLUDING ANY POSSIBLE SUSPENSIONS, REVOCATIONS, JUDGMENTS, AND CITATIONS. THE BOARD HAS OFFICES THROUGHOUT CALIFORNIA. PLEASE CHECK THE GOVERNMENT PAGES OF THE WHITE PAGES FOR THE OFFICE NEAREST YOU OR

CALL 1-800-321-CSLB FOR MORE INFORMATION."

(c) Failure to comply with the notice requirements set forth in subdivision (a) or (b) of this section is cause for disciplinary action.

SEC. 3. Section 7048 of the Business and Professions Code is amended to read:

7048. (a) This chapter does not apply to any work or operation on one undertaking or project by one or more contracts, the aggregate contract price which for labor, materials, and all other items, is less than five hundred dollars ($500), that work or operations being considered of casual, minor, or inconsequential nature.

This exemption does not apply in any case wherein the work of construction is only a part of a larger or major operation, whether undertaken by the same or a different contractor, or in which a division of the operation is made in contracts of amounts less than five hundred dollars ($500) for the purpose of evasion of this chapter or otherwise.

This exemption does not apply to a person who advertises or puts out any sign or card or other device which might indicate to the public that he or she is a contractor or that he or she is qualified to engage in the business of a contractor.

(b) Any person performing work costing less than five hundred dollars ($500) who is not licensed under this chapter shall disclose to the purchaser of the work the fact that he or she is not licensed by the Contractors' State License Board.

At the time of making a bid or prior to entering into a contract to perform work for less than five hundred dollars ($500), whichever occurs first, the person performing the work shall provide the following notice in capital letters in at least 10-point roman boldface type or in contrasting red print in at least 8-point roman boldface type:

"I, (individual's name), AM NOT LICENSED BY THE CONTRACTORS' STATE LICENSE BOARD.

STATE LAW REQUIRES ANYONE WHO CONTRACTS TO DO CONSTRUCTION WORK TO BE LICENSED BY THE CONTRACTORS' STATE LICENSE BOARD IN THE LICENSE CATEGORY IN WHICH THE CONTRACTOR IS GOING TO BE WORKING—IF THE TOTAL PRICE OF THE JOB IS $500 OR MORE (INCLUDING LABOR AND MATERIALS).

LICENSED CONTRACTORS ARE REGULATED BY LAWS DESIGNED TO PROTECT THE PUBLIC. IF YOU CONTRACT WITH SOMEONE WHO DOES NOT HAVE A LICENSE, THE CONTRACTORS' STATE LICENSE BOARD MAY BE UNABLE TO ASSIST YOU WITH A COMPLAINT. YOUR ONLY REMEDY AGAINST AN UNLICENSED CONTRACTOR MAY BE IN CIVIL

COURT, AND YOU MAY BE LIABLE FOR DAMAGES ARISING OUT OF ANY INJURIES TO THE CONTRACTOR OR HIS OR HER EMPLOYEES."

The person performing the work shall maintain for four years a copy of the above notice signed by the purchaser of the work acknowledging receipt of this notice.

The exemption provided by this section does not apply to any person failing to provide the required notice to the purchaser of the work.

This notice need only be provided once to the same purchaser of subsequent work.

CHAPTER 634

An act to amend Section 989.5 of the Military and Veterans Code, relating to veterans, and making an appropriation therefor.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 989.5 of the Military and Veterans Code is amended to read:

989.5. All purchasers shall participate in the Indemnity Fund. Purchasers shall pay a reasonable charge, prescribed by the department, in addition to the regular monthly installment. Money so collected shall be deposited in the Indemnity Fund.

CHAPTER 635

An act to amend Section 33333.6 of the Health and Safety Code, relating to redevelopment.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 33333.6 of the Health and Safety Code is amended to read:

33333.6. The limitations of this section shall apply to every redevelopment plan adopted on or before December 31, 1993.

(a) (1) The time limit on the establishing of loans, advances, and indebtedness adopted pursuant to paragraph (2) of subdivision (a) of Section 33333.2 or paragraph (2) of subdivision (a) of Section 33333.4 shall not exceed 20 years from the adoption of the redevelopment plan or January 1, 2004, whichever is later. This limit, however, shall not prevent agencies from incurring debt to be paid from the Low and Moderate Income Housing Fund or establishing more debt in order to fulfill the agency's housing obligations under Section 33413. This limit shall not prevent agencies from refinancing, refunding, or restructuring indebtedness after the time limit if the indebtedness is not increased and the time during which the indebtedness is to be repaid does not exceed the date on which the indebtedness would have been paid.

(2) The time limitation established by this subdivision may be extended, only by amendment of the redevelopment plan, after the agency finds, based on substantial evidence that: (A) significant blight remains within the project area; and (B) this blight cannot be eliminated without the establishment of additional debt. However, this amended time limitation may not exceed 10 years from the time limit established pursuant to this subdivision or the time limit on the effectiveness of the plan established pursuant to subdivision (b), whichever is earlier.

(b) The effectiveness of every redevelopment plan to which this section applies shall terminate at a date which shall not exceed 40 years from the adoption of the redevelopment plan or January 1, 2009, whichever is later. After the time limit on the effectiveness of the redevelopment plan, the agency shall have no authority to act pursuant to the redevelopment plan except to pay previously incurred indebtedness and to enforce existing covenants, contracts, or other obligations.

(c) Except as provided in subdivisions (g) and (h), a redevelopment agency shall not pay indebtedness or receive property taxes pursuant to Section 33670 after 10 years from the termination of the effectiveness of the redevelopment plan pursuant to subdivision (b).

(d) (1) If plans which had different dates of adoption were merged on or before December 31, 1993, the time limitations required by this section shall be counted individually for each merged plan from the date of the adoption of each plan. If an amendment to a redevelopment plan added territory to the project area on or before December 31, 1993, the time limitations required by this section shall commence, with respect to the redevelopment plan, from the date of the adoption of the redevelopment plan, and, with respect to the added territory, from the date of the adoption of the amendment.

(2) If plans that had different dates of adoption are merged on or after January 1, 1994, the time limitations required by this section

shall be counted individually for each merged plan from the date of the adoption of each plan.

(e) (1) Unless a redevelopment plan adopted prior to January 1, 1994, contains all of the limitations required by this section and each of these limitations does not exceed the applicable time limits established by this section, the legislative body, acting by ordinance on or before December 31, 1994, shall amend every redevelopment plan adopted prior to January 1, 1994, either to amend an existing time limit that exceeds the applicable time limit established by this section or to establish time limits that do not exceed the provisions of subdivision (a), (b), or (c).

(2) The limitations established in the ordinance adopted pursuant to this section shall apply to the redevelopment plan as if the redevelopment plan had been amended to include those limitations. However, in adopting the ordinance required by this section, neither the legislative body nor the agency is required to comply with Article 12 (commencing with Section 33450) or any other provision of this part relating to the amendment of redevelopment plans.

(f) (1) If a redevelopment plan adopted prior to January 1, 1994, contains one or more limitations required by this section, and the limitation does not exceed the applicable time limit required by this section, this section shall not be construed to require an amendment of this limitation.

(2) A redevelopment plan adopted prior to January 1, 1994, that has a limitation shorter than the terms provided in this section may be amended by a legislative body by adoption of an ordinance on or after January 1, 1999, but on or before December 31, 1999, to extend the limitation, provided that the plan as so amended does not exceed the terms provided in this section. In adopting this ordinance, neither the legislative body nor the agency is required to comply with Section 33354.6 or Article 12 (commencing with Section 33450) or any other provision of this part relating to the amendment of redevelopment plans.

(g) The limitations established in the ordinance adopted pursuant to this section shall not be applied to limit allocation of taxes to an agency to the extent required to eliminate project deficits created under subdivision (e) of Section 33320.5, subdivision (g) of Section 33334.6, or subdivision (d) of Section 33487, in accordance with the plan adopted pursuant thereto for the purpose of eliminating the deficits or to implement a replacement housing program pursuant to Section 33413. In the event of a conflict between these limitations and the obligations under Section 33334.6 or to implement a replacement housing program pursuant to Section 33413, the legislative body shall amend the ordinance adopted pursuant to this section to modify the limitations to the extent necessary to permit compliance with the plan adopted pursuant to subdivision (g) of Section 33334.6 and to allow full expenditure of moneys in the agency's Low and Moderate Income Housing Fund in accordance with Section 33334.3 or to

permit implementation of the replacement housing program pursuant to Section 33413. The procedure for amending the ordinance pursuant to this subdivision shall be the same as for adopting the ordinance under subdivision (e).

(h) This section shall not be construed to affect the validity of any bond, indebtedness, or other obligation, including any mitigation agreement entered into pursuant to Section 33401, authorized by the legislative body, or the agency pursuant to this part, prior to January 1, 1994. Nor shall this section be construed to affect the right of an agency to receive property taxes, pursuant to Section 33670, to pay the indebtedness or other obligation.

(i) A redevelopment agency shall not pay indebtedness or receive property taxes pursuant to Section 33670, with respect to a redevelopment plan adopted prior to January 1, 1994, after the date identified in subdivision (c) or the date identified in the redevelopment plan, whichever is earlier, except as provided in paragraph (2) of subdivision (f) or in subdivision (h).

(j) The Legislature finds and declares that the amendments made to this section by the act that adds this subdivision are intended to add limitations to the law on and after January 1, 1994, and are not intended to change or express legislative intent with respect to the law prior to that date. It is not the intent of the Legislature to affect the merits of any litigation regarding the ability of a redevelopment agency to sell bonds for a term that exceeds the limit of a redevelopment plan pursuant to law that existed prior to January 1, 1994.

(k) If a redevelopment plan is amended to add territory, the amendment shall contain the time limits required by Section 33333.2.

CHAPTER 636

An act to amend Section 50286 of the Government Code, relating to land use.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 50286 of the Government Code is amended to read:

50286. (a) If a contract is canceled under Section 50284, the owner shall pay a cancellation fee equal to $12^1/_2$ percent of the current fair market value of the property , as determined by the county assessor as though the property were free of the contractual restriction.

(b) The cancellation fee shall be paid to the county auditor, at the time and in the manner that the county auditor shall prescribe, and shall be allocated by the county auditor to each jurisdiction in the tax rate area in which the property is located in the same manner as the auditor allocates the annual tax increment in that tax rate area in that fiscal year.

(c) Notwithstanding any other provision of law, revenue received by a school district pursuant to this section shall be considered property tax revenue for the purposes of Section 42238 of the Education Code, and revenue received by a county superintendent of schools pursuant to this section shall be considered property tax revenue for the purposes of Article 3 (commencing with Section 2550) of Chapter 12 of Part 2 of Division 1 of Title 1 of the Education Code.

SEC. 2. No reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law.

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

CHAPTER 637

An act to amend Sections 45203, 79020, and 88203 of, and to add Section 37220.7 to, the Education Code, and to amend Sections 6712, 19853, and 19853.1 of the Government Code, relating to Native Americans.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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

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

(a) An emphasis on freedom, justice, patriotism, and representative government have always been elements of Native American culture, and Native Americans have shown their willingness to fight and die for this nation in foreign lands.

(b) Native Americans honor the American flag at every pow wow and at many gatherings, and remember veterans through song, music, and dance.

(c) Native Americans use songs to honor the men and women of this country who have fought for freedom.

(d) Native Americans love the land that has nurtured their parents, grandparents, and unnamed elders since time began, and they honor the Earth that has brought life to the people since time immemorial.

(e) Native Americans have given much to this country, and in recognition of this fact, it is fitting that this state returns the honor by recognizing Native Americans for all of their offerings to this beloved land through the establishment of a state holiday referred to as "Native American Day."

SEC. 2. Section 37220.7 is added to the Education Code, to read:

37220.7. (a) In addition to the holidays prescribed in Section 37220, public schools may be closed on the fourth Friday in September, known as "Native American Day," if the governing board, pursuant to a memorandum of understanding reached pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, agrees to close schools for that purpose.

(b) On the fourth Friday in September, or if schools are closed on that date as specified in subdivision (a), on an alternate day determined by the governing board, public schools and educational institutions throughout this state may include exercises, funded through existing resources, commemorating and directing attention to the many contributions that Native Americans have made to this country. The State Board of Education may adopt a model curriculum guide to be available for use by public schools for exercises related to Native American Day.

SEC. 3. Section 45203 of the Education Code is amended to read:

45203. All probationary or permanent employees that are a part of the classified service shall be entitled to the following paid holidays provided they are in a paid status during any portion of the working day immediately preceding or succeeding the holiday: January 1, February 12 known as "Lincoln Day," the third Monday in February known as "Washington Day," the last Monday in May known as "Memorial Day," July 4, the first Monday in September known as "Labor Day," November 11 known as "Veterans Day," that Thursday in November proclaimed by the President as "Thanksgiving Day," December 25, every day appointed by the President, or the Governor of this state, as provided for in subdivisions (b) and (c) of Section 37220 for a public fast, thanksgiving or holiday, or any day declared a holiday under Section 1318 or 37222 for classified or certificated employees. School recesses during the Christmas, Easter, and mid-February periods shall not be considered holidays for classified employees who are normally required to work during that period. However, this shall not be construed as affecting vacation rights specified in this section.

Regular employees of the district who are not normally assigned to duty during the school holidays of December 25 and January 1 shall be paid for those two holidays provided that they were in a paid status during any portion of the working day of their normal assignment immediately preceding or succeeding the holiday period.

When a holiday listed in this section falls on a Sunday, the following Monday shall be deemed to be the holiday in lieu of the day observed. When a holiday listed in this section falls on a Saturday, the preceding Friday shall be deemed to be the holiday in lieu of the day observed. When a classified employee is required to work on any of these holidays, he or she shall be paid compensation, or given compensating time off, for such work, in addition to the regular pay received for the holiday, at the rate of time and one-half the employee's regular rate of pay.

The provisions of Article 3 (commencing with Section 37220) of Chapter 2 of Part 22 shall not be construed to in any way limit the provisions of this section, nor shall anything in this section be construed to prohibit the governing board from adopting separate work schedules for the certificated and the classified services, or from providing holiday pay for employees who have not been in paid status on the days specified herein. Notwithstanding the adoption of separate work schedules for the certificated and the classified services, on any schoolday during which pupils would otherwise have been in attendance but are not and for which certificated personnel receive regular pay, classified personnel shall also receive regular pay whether or not they are required to report for duty that day.

In addition to the other paid holidays specified in this section, the classified service may be entitled to a paid holiday on March 31 known as "Cesar Chavez Day," and a paid holiday on the fourth Friday in September known as "Native American Day," provided they are in a paid status during any portion of the working day immediately preceding or succeeding the holiday, if the governing board, pursuant to a memorandum of understanding reached pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, agrees to the paid holiday.

This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 6 (commencing with Section 45240).

SEC. 4. Section 79020 of the Education Code is amended to read:

79020. Except as otherwise provided the community colleges shall continue in session or close on specified holidays as follows:

(a) The community colleges shall close on January 1st, the third Monday in January, commencing in the 1989–90 fiscal year, known as "Dr. Martin Luther King, Jr. Day," February 12th known as "Lincoln Day," the third Monday in February known as "Washington Day," the last Monday in May known as "Memorial Day," July 4th, the first Monday in September known as "Labor Day," November

11th known as "Veterans Day," that Thursday in November proclaimed by the President as "Thanksgiving Day," and December 25th.

(b) Any contractual provision between any community college district and its employees in effect on the effective date of the act that adds this subdivision shall prevail over any conflict regarding Dr. Martin Luther King, Jr. Day until the termination date of the contract or upon termination by mutual agreement of the parties, whichever occurs first.

(c) The Governor in appointing any other day for a public fast, thanksgiving, or holiday may provide whether the community colleges shall close on the day. If the Governor does not provide whether the community colleges shall close, they shall continue in session on all special or limited holidays appointed by the Governor, but shall close on all other days appointed by the Governor for a public fast, thanksgiving, or holiday.

(d) The community colleges shall close on every day appointed by the President as a public fast, thanksgiving, or holiday, unless it is a special or limited holiday.

(e) The community colleges shall continue in session on all legal holidays other than those designated by or pursuant to this section, and shall hold proper exercises commemorating the day.

(f) When any of the holidays on which the schools would be closed fall on Sunday, the community colleges shall close on the Monday following, except that (1) if Lincoln Day falls on a Sunday, the community colleges may observe this holiday on the preceding or following Friday, the following Monday, or the following Tuesday, and maintain classes on the date specified in subdivision (a) where applicable, or (2) if Lincoln Day falls on a Monday, the community colleges may observe this holiday on the preceding or following Friday, that Monday, or the following Tuesday, and maintain classes on the date specified in subdivision (a) where applicable.

(g) When any of the holidays on which the schools would be closed, except Lincoln Day, fall on Saturday, the community colleges shall close on the preceding Friday, and that Friday shall be declared a state holiday.

(h) If any holiday on which the community colleges are required to close pursuant to subdivision (a) occurs under federal law on a date different than the date specified in subdivision (a), the governing board of any community college district may close the community colleges of the district on the date recognized by federal law and maintain classes on the date specified in subdivision (a).

(i) When Veterans Day would fall on Tuesday, the governing board of a community college district may close the colleges on the preceding Monday, and maintain classes on the date specified in subdivision (a). When Veterans Day would fall on Wednesday, the governing board of a community college district may close the colleges on either the preceding Monday or the following Friday, and

maintain classes on the date specified in subdivision (a). When Veterans Day would fall on Thursday, the governing board of a community college district may close the colleges on the following Friday, and maintain classes on the date specified in subdivision (a).

(j) When Lincoln Day would fall on Tuesday, the governing board of a community college district may close the colleges on the preceding Monday, the preceding Friday, or the following Friday, and maintain classes on the date specified in subdivision (a) where appropriate. When Lincoln Day would fall on Wednesday, the governing board of a community college district may close the colleges on the preceding Monday, the preceding Friday, or the following Friday, and maintain classes on the date specified in subdivision (a). When Lincoln Day would fall on Thursday, the governing board of a community college district may close the colleges on the preceding Friday or the following Friday, and maintain classes on the date specified in subdivision (a). When Lincoln Day falls on Saturday, the governing board of a community college district may close the colleges on the preceding Friday or the following Friday, and maintain classes on the date specified in subdivision (a) where appropriate.

(k) In addition to the holidays specified in subdivision (a), a community college may close on March 31 known as "Cesar Chavez Day" if the governing board, pursuant to a memorandum of understanding reached pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, agrees to close the community college for that purpose.

(*l*) In addition to the holidays specified in subdivision (a), a community college may close on the fourth Friday in September known as "Native American Day" if the governing board, pursuant to a memorandum of understanding reached pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, agrees to close the community college for that purpose.

(m) Nothing in this section is to be interpreted as authorizing a community college district governing board to maintain community colleges in its district for a lesser number of days during the college year than the minimum established by law.

SEC. 5. Section 88203 of the Education Code is amended to read:

88203. All probationary or permanent employees who are part of the classified service shall be entitled to the following paid holidays if they are in a paid status during any portion of the working day immediately preceding or succeeding the holiday: January 1, February 12 known as "Lincoln Day," the third Monday in February known as "Washington Day," the last Monday in May known as "Memorial Day," July 4, the first Monday in September known as "Labor Day," November 11 known as "Veterans Day," that Thursday in November proclaimed by the President as "Thanksgiving Day," December 25, every day appointed by the President, or the Governor

of this state, as provided for in subdivisions (c) and (d) of Section 79020 for a public fast, thanksgiving or holiday, or any day declared a holiday under Section 1318 for classified or academic employees. College recesses during the Christmas and Easter periods shall not be considered holidays for classified employees who are normally required to work during that period; provided, however, that this shall not be construed as affecting vacation rights specified in this section.

Regular employees of the district who are not normally assigned to duty during the college holidays of December 25 and January 1 shall be paid for those two holidays if they were in a paid status during any portion of the working day of their normal assignment immediately preceding or succeeding the holiday period.

When a holiday herein listed falls on a Sunday, the following Monday shall be deemed to be the holiday in lieu of the day observed. When a holiday herein listed falls on a Saturday, the preceding Friday shall be deemed to be the holiday in lieu of the day observed. When a classified employee is required to work on any of said holidays, he or she shall be paid compensation, or given compensating time off, for such work, in addition to the regular pay received for the holiday, at the rate of time and one-half his or her regular rate of pay.

Article 3 (commencing with Section 79020) of Chapter 8 of Part 48 of this division shall not be construed to in any way limit this section, nor shall anything in this section be construed to prohibit the governing board from adopting separate work schedules for the academic and the classified services, or from providing holiday pay for employees who have not been in paid status on the days specified herein. Notwithstanding the adoption of separate work schedules for the academic and the classified services, on any schoolday during which students would otherwise have been in attendance, but are not and for which faculty receive regular pay, classified personnel shall also receive regular pay whether or not they are required to report for duty that day.

In addition to the other paid holidays specified in this section, the classified service may be entitled to a paid holiday on March 31 known as "Cesar Chavez Day" and a paid holiday on the fourth Friday in September known as "Native American Day," if they are in a paid status during any portion of the working day immediately preceding or succeeding the holiday, if the governing board, pursuant to a memorandum of understanding reached pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, agrees to the paid holiday.

This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 3 (commencing with Section 88060).

SEC. 6. Section 6712 of the Government Code is amended to read:

6712. The Governor shall proclaim annually the fourth Friday in September to be "Native American Day."

SEC. 7. Section 19853 of the Government Code is amended to read:

19853. (a) Except as provided in subdivision (c), all employees shall be entitled to the following holidays: January 1, the third Monday in January, February 12, the third Monday in February, the last Monday in May, July 4, the first Monday in September, the second Monday in October, November 11, the day after Thanksgiving, December 25, the day chosen by an employee pursuant to Section 19854, and every day appointed by the Governor of this state for a public fast, thanksgiving, or holiday.

If a day listed in this subdivision falls on a Sunday, the following Monday shall be deemed to be the holiday in lieu of the day observed. If November 11th falls upon a Saturday, the preceding Friday shall be deemed to be the holiday in lieu of the day observed. Any employee who may be required to work on any of the holidays included in this subdivision, and who does work on any of these holidays, shall be entitled to be paid compensation or given compensating time off for that work in accordance with their classification's assigned workweek group. For the purpose of computing the number of hours worked, time when an employee is excused from work because of holidays, sick leave, vacation, annual leave, or compensating time off, shall be considered as time worked by the employee.

(b) If the provisions of subdivision (a) are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(c) Any employee, who is either excluded from the definition of state employee in subdivision (c) of Section 3513, or is a nonelected officer or employee of the executive branch of government who is not a member of the civil service, shall be entitled to the following holidays, with pay, in addition to any official state holiday appointed by the Governor:

(1) January 1, the third Monday in January, February 12, the third Monday in February, the last Monday in May, July 4, the first Monday in September, the second Monday in October, November 11, Thanksgiving Day, the day after Thanksgiving, December 25, and any personal holiday chosen pursuant to Section 19854. The department head or designee may require an employee to provide five working days' advance notice before a personal holiday is taken, and may deny use subject to operational needs.

(2) When November 11 falls on a Saturday, employees shall be entitled to the preceding Friday as a holiday with pay.

(3) When a holiday, other than a personal holiday or November 11, falls on a Saturday, an employee shall, regardless of whether he or she works on the holiday, only accrue an additional eight hours of personal holiday credit per fiscal year for the holiday. The holiday credit shall be accrued on the actual date of the holiday and shall be used within the same fiscal year.

(4) When a holiday other than a personal holiday falls on Sunday, employees shall be entitled to the following Monday as a holiday with pay.

(5) Employees who are required to work on a holiday shall be entitled to pay or compensating time off for this work in accordance with their classification's assigned workweek group.

(6) Less than full-time employees shall receive holidays in accordance with Department of Personnel Administration rules.

(d) (1) Any employee, as defined in subdivision (c) of Section 3513, may elect to receive eight hours of holiday credit for March 31, known as "Cesar Chavez Day," or for the fourth Friday in September, known as "Native American Day," in lieu of receiving eight hours of personal holiday credit in accordance with Section 19854.

(2) It is not the intent of the Legislature, by the amendments to this subdivision that add this paragraph, to increase the personal holiday credit that an employee receives pursuant to Section 19854.

SEC. 8. Section 19853.1 of the Government Code is amended to read:

19853.1. (a) Notwithstanding Section 19853, this section shall apply to state employees in State Bargaining Unit 5 or 16.

(b) Except as provided in subdivision (c), all employees shall be entitled to the following holidays: January 1, the third Monday in January, the third Monday in February, the last Monday in May, July 4, the first Monday in September, November 11, the day after Thanksgiving, December 25, and every day appointed by the Governor of this state for a public fast, Thanksgiving, or holiday.

If a day listed in this subdivision falls on a Sunday, the following Monday shall be deemed to be the holiday in lieu of the day observed. If November 11 falls upon a Saturday, the preceding Friday shall be deemed to be the holiday in lieu of the day observed. Any employee who may be required to work on any of the holidays included in this section and who does work on any of these holidays shall be entitled to be paid compensation or given compensating time off for that work in accordance with his or her classification's assigned workweek group.

(c) If the provisions of subdivision (b) are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the

expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(d) Any employee who either is excluded from the definition of state employee in subdivision (c) of Section 3513, or is a nonelected officer or employee of the executive branch of government who is not a member of the civil service, is entitled to the following holidays, with pay, in addition to any official state holiday appointed by the Governor:

(1) January 1, the third Monday in January, the third Monday in February, the last Monday in May, July 4, the first Monday in September, November 11, Thanksgiving Day, the day after Thanksgiving, December 25.

(2) When November 11 falls on a Saturday, employees shall be entitled to the preceding Friday as a holiday with pay.

(3) When a holiday, other than a personal holiday, falls on a Saturday, an employee shall, regardless of whether he or she works on the holiday, accrue only an additional eight hours of personal holiday credit per fiscal year for the holiday. The holiday credit shall be accrued on the actual date of the holiday and shall be used within the same fiscal year.

(4) When a holiday other than a personal holiday falls on Sunday, employees shall be entitled to the following Monday as a holiday with pay.

(5) Employees who are required to work on a holiday shall be entitled to pay or compensating time off for this work in accordance with their classification's assigned workweek group.

(6) Persons employed on less than a full-time basis shall receive holidays in accordance with the Department of Personnel Administration rules.

(e) Any employee, as defined in subdivision (c) of Section 3513, may elect to use eight hours of vacation, annual leave, or compensating time off consistent with departmental operational needs and collective bargaining agreements for March 31, known as "Cesar Chavez Day."

(f) Any employee, as defined in subdivision (c) of Section 3513, may elect to use eight hours of vacation, annual leave, or compensating time off consistent with departmental operational needs and collective bargaining agreements for the fourth Friday in September, known as "Native American Day."

(g) This section shall become effective only when the Department of Personnel Administration notifies the Legislature that the language contained in this section has been agreed to by all the parties, and the necessary statutes are amended to reflect this change for employees excluded from the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512), Division 4, Title 1).

CHAPTER 638

An act to add and repeal Section 1596.7926 of the Health and Safety Code, relating to child care, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. In San Bernardino County, where parties were unable to agree upon a single implementation plan for stage two child care funds, pursuant to California Department of Education Management Bulletin 97-22, the Superintendent of Public Instruction shall allocate stage two funds appropriated for the 1998–99 fiscal year to the contractor currently serving families from that county that demonstrates the greatest ability to coordinate services with the entity responsible for delivery of stage one child care services. In implementing this provision the superintendent shall ensure that services to children and families are not interrupted. Nothing in this section shall be construed to create a precedent regarding alternative payment program contracts for the provision of child care to recipients of aid under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code or to establish any new criteria for child care providers who enter into alternative payment program contracts with the State Department of Education for the provision of child care to recipients of aid under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code.

SEC. 2. Section 1596.7926 is added to the Health and Safety Code, to read:

1596.7926. (a) For purposes of this section "public recreation program" means a recreation program operated by the state, city, county, special district, school district, community college district, chartered city, chartered county, or chartered city and county.

(b) In addition to the exempt settings set forth in Section 1596.792, this chapter and Chapter 3.5 (commencing with Section 1596.90) shall not apply to any public recreation program in Riverside County that meets the following criteria:

(1) The program operates only during hours other than normal school hours for grades 1 to 8, inclusive, in the public school district where the program is located, or operates only during periods when students in grades 1 to 8, inclusive, are normally not in session in the public school district where the program is located, and operates for either of the following periods:

(A) For under 20 hours per week.

(B) For a total of 12 weeks or less per school program or track during a 12-month period. This total applies to any 12 weeks within any 12-month period, without regard to whether the weeks are consecutive. In determining "normal school hours" or periods when students are "normally not in session," the department shall, where appropriate, consider the normal school hours or periods when students are normally not in session for students attending a year-round school.

(2) No charges or costs shall be associated with the provision of care.

(3) Employees must be professional recreation or child care workers.

(4) Employees must:

(A) Have a current certificate in first aid and cardiopulmonary resuscitation issued by an approved training program that has been approved by the Emergency Medical Services Authority.

(B) Be at least 18 years of age.

(C) Have received a criminal records clearance through a criminal background check, including fingerprints unless prohibited by an individual's physical condition, performed by the Department of Justice and a Child Abuse Index Clearance and the results have been returned to the public recreation program, school, or school district.

(c) It is the intent of the Legislature in enacting this section that the following occur:

(1) The public recreation programs exempted from the requirements of this chapter and Chapter 3.5 (commencing with Section 1596.90) pursuant to subdivision (b) shall ensure the health and safety of participating children and shall provide a safe and effective means of reducing juvenile crime.

(2) There are no costs to this program other than those provided by the jurisdiction of the participating public recreation program, and the participating children and their families shall not incur any cost for the program pursuant to this section.

(3) The overall quality of care is not adversely affected.

(4) This section was established to provide for the unique needs of the participating families whose commute to work to and from neighboring counties prohibits them from picking up their children within the limits prescribed by subdivision (g) of Section 1596.792 of this chapter.

(5) The programs will be provided immediately following the school day.

(6) This program prevents participants from becoming "latchkey" children.

(d) This section does not require all public recreation programs to operate the program pursuant to this section. A public recreation program may elect to operate subject to all licensure requirements otherwise applicable to day care programs set forth in this chapter

or may be required pursuant to the contract that the program operate subject to all licensure requirements.

(e) A public recreation program that operates an excess of the number of hours provided in paragraph (g) in Section 1596.792 and fewer than 20 hours per week for children in grades 1 to 8, inclusive, as a licensed exempt provider shall conduct an annual evaluation of their program, and the results of this evaluation shall be reported to the appropriate policy committees of the Legislature by June 1, 2000.

(f) This section shall become inoperative on September 1, 2001, and, as of January 1, 2002, is repealed, unless a later enacted statute that is enacted before January 1, 2002, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. The Legislature finds and declares that for Section 1 of this act, because of the unique circumstances applicable to the County of San Bernardino, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To efficiently promote the public safety of children in day care and public recreation programs within Riverside County, it is necessary that this act take effect immediately as an urgency statute.

CHAPTER 639

An act to amend Sections 23355.1, 23357.2, 23399.5, 23405, 23405.1, 23951, 23953, 24045.12, 24071.1, 25503.11, 25503.12, and 25608 of, to amend and renumber Section 23405.3 of, and to repeal Section 23405.2 of, the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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 consigned by any person, whether or not the auctioned wine is "vintage wine" as defined in Section 23104.6, 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 23357.2 of the Business and Professions Code is amended to read:

23357.2. (a) An out-of-state beer manufacturer's certificate may be issued by the department upon the written undertaking and agreement by the applicant:

(1) That it and its agents and all agencies within this state controlled by it will comply with all laws of this state and all rules of the department with respect to the sale of alcoholic beverages, including, but not limited to, Chapter 12 (commencing with Section 25000) of Division 9, and Section 25509, to the same extent as licensees.

(2) That it will make available, both in California and outside the state, for inspection and copying by the department, all books, documents, and records, located both within and without this state, which are pertinent to the activities of the applicant, its agents and agencies within this state controlled by it, in connection with the sale and distribution of its products within this state.

(b) The department may suspend or revoke an out-of-state beer manufacturer's certificate for cause in the manner provided for the suspension or revocation of licenses, and after a hearing which shall

be held in the City of Sacramento or in any other county seat in this state as the department determines to be convenient to the holder of an out-of-state certificate.

(c) The annual fees for an out-of-state beer manufacturer's certificate shall be determined by the department, and shall approximate the department's cost of issuance of the certificate.

(d) All money collected from the fees provided for in this section shall be deposited in the Alcohol Beverage Control Fund as provided by Section 25761.

SEC. 3. Section 23399.5 of the Business and Professions Code is amended to read:

23399.5. (a) No license or permit is required for the serving of alcoholic beverages in a limousine by any person operating a limousine service regulated by the Public Utilities Commission, provided there is no extra charge or fee for the alcoholic beverages.

For purposes of this subdivision, there is no extra charge or fee for the alcoholic beverages when the fee charged for the limousine service is the same regardless of whether alcoholic beverages are served.

(b) No license or permit is required for the serving of alcoholic beverages as part of a hot air balloon ride service, provided there is no extra charge or fee for the alcoholic beverages.

For purposes of this subdivision, there is no extra charge or fee for the alcoholic beverages when the fee charged for the hot air balloon ride service is the same regardless of whether alcoholic beverages are served.

SEC. 4. Section 23405 of the Business and Professions Code is amended to read:

23405. (a) Any corporation holding a license under this division shall maintain a record of its shareholders at the principal office of the corporation in California and the record of its shareholders shall be available to the department for inspection. The corporation shall report to the department in writing any of the following:

(1) Issuance or transfer of any shares of stock to any person where the issuance or transfer results in the person owning 10 percent or more of the corporate stock.

(2) Change in any of the corporate officers which are required by Section 312 of the Corporations Code.

(3) Change of the members of its board of directors.

The report shall be filed with the department within 30 days after the issuance or transfer of corporate stock, change in corporate officers, or change in members of the board of directors, as the case may be.

(b) Any licensee within the purview of this section who is required by federal law to report to the federal government under the provisions of the Federal Alcohol Administration Act or the Internal Revenue Code the information required by this section may send to the department a copy of the report at the same time as it is sent to

the federal government, and the copy of the report sent to the department by the licensee shall be deemed sufficient compliance with the provisions of this section.

(c) The provisions of this section shall not apply to any of the following:

(1) A corporation the stock of which is listed on a stock exchange in this state or in the City of New York, State of New York.

(2) A bank, trust company, financial institution or title company to which a license is issued in a fiduciary capacity.

(3) A corporation which is required by law to file periodic reports with the Securities and Exchange Commission.

(d) The department may deny any application or suspend or revoke any license of a corporation subject to the provisions of this section where conditions exist in relation to any officer, director, or person holding 10 percent or more of the corporate stock of that corporation which would constitute grounds for disciplinary action against that person if the person was a licensee.

SEC. 5. Section 23405.1 of the Business and Professions Code is amended to read:

23405.1. (a) Any limited partnership holding a license under this division shall maintain a register at the principal office of the limited partnership in California and the register shall be available to the department for inspection. The limited partnership shall report to the department in writing the assignment or transfer of the interest of any limited partner of the limited partnership where the assignment or transfer results in a person owning as a limited partner 10 percent or more of the capital or profits of the limited partnership. The limited partnership shall report to the department in writing any change in the general partners of the limited partnership.

The report shall be filed with the department within 30 days after the assignment or transfer of the limited partnership interest.

(b) Any licensee within the purview of this section who is required by federal law to report to the federal government under the provisions of the Federal Alcohol Administration Act or the Internal Revenue Code the information required by this section shall send to the department a copy of the report at the same time as it is sent to the federal government. The copy of the report sent to the department by the licensee shall be deemed sufficient compliance with the provisions of this section.

(c) The department may deny any application or suspend or revoke any license of a limited partnership subject to the provisions of this section where conditions exist in relation to any general partner or any limited partner holding 10 percent or more of the capital or profits of the limited partnership that would constitute grounds for disciplinary action against that person if he or she were a licensee.

(d) The register referred to in subdivision (a) of this section shall consist of a register showing the names of the current limited

partners (whether original limited partners or substituted limited partners), the current assignees of limited partnership interests and their addresses, the interest in the capital and profits of the limited partnership owned by each limited partner and each assignee of a limited partnership interest, the number and date of certificates, if any, issued for limited partnership interests, and the number and date of cancellation of every certificate surrendered for cancellation. The above information may be kept by the limited partnership on punchcards, magnetic tape, or other information storage device related to electronic data-processing equipment provided that the card, tape, or other equipment is capable of reproducing the information in clearly legible form for the purposes of inspection as provided in this section.

SEC. 6. Section 23405.2 of the Business and Professions Code is repealed.

SEC. 7. Section 23405.3 of the Business and Professions Code is amended and renumbered to read:

23405.2. (a) Any limited liability company holding a license under this division shall maintain a record of its members at the principal office of the company in California and the record of its members shall be available to the department for inspection. The company shall report to the department in writing any of the following:

(1) Issuance or transfer of memberships to any person where the issuance or transfer results in the person owning 10 percent or more of the voting interests of the company.

(2) If the limited liability company is managed by a manager or managers, any change in the manager or managers of the company.

(3) If any officer has been appointed, any change in the officers of the company.

The report shall be filed with the department within 30 days after the issuance or transfer of membership voting interests, or any change in members, managers, or officers.

(b) Any limited liability company within the purview of this section that is required under the provisions of the Federal Alcohol Administration Act or the Internal Revenue Code to report to the federal government the information required by this section may send to the department a copy of the report at the same time as it is sent to the federal government. The copy of the report sent to the department by the company shall be deemed sufficient compliance with the provisions of this section.

(c) The reporting requirements of subdivision (b) shall not apply to a limited liability company that is required by law to file periodic reports with the Securities and Exchange Commission.

(d) The person or persons who are required to sign the application shall certify to the department on forms prescribed by the department whether or not any member, manager, or officer holds an ownership interest, directly or indirectly, in any license within or

without this state to manufacture, import, distribute, rectify, or sell alcoholic beverages. The department may deny any application or suspend or revoke any license under this section in the event any member, manager, or officer holds or acquires any prohibited ownership interest, directly or indirectly, in any licensed business in violation of the tied-house provisions of Chapter 15 (commencing with Section 25500).

(e) The department may deny any application and suspend or revoke any license of a limited liability company subject to the provisions of this section where conditions exist in relation to any manager, officer, or person holding 10 percent or more of the voting interests of the limited liability company that would constitute grounds for disciplinary action against the person if he or she was a licensee.

(f) All articles of organization and operating agreements of a limited liability company or certificates or amendments thereto shall be filed with the department at the time of filing the application for the license. All articles of organization, operating agreements, certificates, or amendments executed after the issuance of the license shall be filed with the department within 30 days after execution.

(g) The requirements of this section are in addition to the requirements set forth in the Beverly-Killea Limited Liability Company Act, Title 2.5 (commencing with Section 17000) of the Corporations Code.

SEC. 8. Section 23951 of the Business and Professions Code is amended to read:

23951. The application shall contain the following information:

(a) The name of the applicant.

(b) For a general partnership, the names of the individual partners.

(c) For a limited partnership, limited liability company, or a corporation, the name of the entity.

(d) The location of the premises for which the license is applied.

SEC. 9. Section 23953 of the Business and Professions Code is amended to read:

23953. (a) The application shall be signed by the applicant.

(b) For a general partnership, the application shall be signed by each of the partners, and for the purposes of this division the partners shall be deemed the applicant for any license and the licensees under any license issued pursuant to that application.

(c) For a limited partnership, the application for any license shall be signed by each of the general partners.

(d) For a limited liability company that has elected to be managed by its members, the application shall be signed by each member or by an officer authorized by the articles of organization or the operating agreement to bind the company. In the case of a limited liability company that has elected to be managed by a manager or managers, the application shall be signed by the manager or

managers or by an officer authorized by the articles of organization or the operating agreement to bind the company.

(e) For a corporation, the application shall be signed by two officers of the corporation, one from each of the following categories:

(1) The chairperson of the board, the president, or a vice president.

(2) The secretary, assistant secretary, chief financial officer, or assistant treasurer.

SEC. 10. Section 24045.12 of the Business and Professions Code is amended to read:

24045.12. Notwithstanding any other provision of law, the department may issue a general on-sale license to a person who does not operate a bona fide eating place or other public premises who meets all of the following:

(a) Has operated a catering business for not less than five years.

(b) Has operated or owned for not less than one year a bona fide eating place that had a general on-sale license.

(c) Caters over 500 events annually.

(d) Serves alcoholic beverages at no more than 25 percent of the events catered annually and has revenues from the sale of alcoholic beverages which do not constitute more than 25 percent of his or her total annual revenues.

(e) Obtains an annual permit to serve alcoholic beverages at events and obtains an authorization for each event, as specified in Section 23399.

SEC. 11. Section 24071.1 of the Business and Professions Code is amended to read:

24071.1. (a) When the ownership of 50 percent or more of the shares of stock of a corporation, which is required to report the issuance or transfer of those shares of stock under Section 23405, is acquired by or transferred to a person or persons who did not hold the ownership of 50 percent of those shares of stock on the date the license was issued to the corporation, the license of the corporation shall be transferred to the corporation as newly constituted. When there is a new general partner or when the ownership of 50 percent or more of the capital or profits of a limited partnership, which is required to maintain a register under Section 23405.1, is acquired by or transferred to a person or persons as general or limited partners and who did not hold ownership of 50 percent or more of the capital or profits of the limited partnership on the date the license was issued to the limited partnership, the license of the limited partnership shall be transferred to the limited partnership as newly constituted. The fee for the transfer shall be equal to 50 percent of the original fee for the license, except that the minimum fee shall be one hundred dollars ($100) and the maximum fee shall be eight hundred dollars ($800). In situations involving the multiple and simultaneous transfer of licenses under this section, the regular transfer fee shall only be required for one of the licenses being transferred and the remainder

of the licenses shall be transferred for a fee of one hundred dollars ($100) each. All of the transfer fees collected pursuant to this section shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761. Before the license is transferred, the department shall conduct an investigation pursuant to the provisions of Section 23958. Any person or persons who own 50 percent or more of the shares of stock of the corporation or who own as limited partners 50 percent or more of the capital or profits of the limited partnership, as the case may be, shall have all the qualifications required of a person holding the same type of license.

(b) No retail license shall be transferred by a corporation or a limited partnership under this section unless, before the filing of the transfer application with the department, the corporation or limited partnership initiating the transfer records in the office of the county recorder of the county or counties in which the premises to which the license has been issued are situated a notice of the intended transfer, stating all of the following:

(1) The name and address of the corporation or limited partnership.

(2) The name and address of the person or persons acquiring ownership of 50 percent or more of the stock of the corporation or capital or profits of the limited partnership.

(3) The amount of the consideration paid for the stock or limited partnership interests.

(4) The kind of license or licenses intended to be transferred.

(5) The address or addresses of the premises to which the license or licenses have been issued.

A copy of the notice of the intended transfer, certified by the county recorder, shall be filed with the department together with the transfer application.

(c) Notwithstanding any other provision of this division to the contrary, a corporation or limited partnership as newly constituted by transfer under this section, is not eligible for any new credit from any person named in Section 25509 until all delinquent payments owed by the entity as formerly constituted, are made, nor shall any entity retail licensee, by transferring its license under this section, avoid the provisions of Section 25509 with regard to 42-day or 30-day periods, percentage charges for unpaid balances, or cash-on-delivery basis.

SEC. 12. Section 25503.11 of the Business and Professions Code is amended to read:

25503.11. Notwithstanding any other provision of this division, a manufacturer, manufacturer's agent, winegrower, rectifier, importer, or wholesaler may hold a diminutive amount of stock in a corporate retail licensee or serve on the board of directors of a corporate off-sale retail licensee, provided the stock ownership or service on the board of directors, as determined by the department, does not result in the exercise of control over the retail licensee's

business and does not result in the exclusion of any competitor's brand of alcoholic beverages, and provided further that the stock is listed on the New York Stock Exchange, the American Stock Exchange, or NASDAQ, and the department is notified of the stock ownership or service on the board of directors.

SEC. 13. Section 25503.12 of the Business and Professions Code is amended to read:

25503.12. Notwithstanding any other provision of this division, a retail licensee may hold a diminutive amount of stock in a corporate licensed manufacturer, manufacturer's agent, winegrower, rectifier, importer, or wholesaler, provided that the purpose of the stock ownership by the retail licensee, as determined by the department, is not to violate any of the provisions of this chapter, and provided further that the stock is listed on the New York Stock Exchange, the American Stock Exchange, or on NASDAQ, and the department is notified of the stock ownership.

SEC. 14. Section 25608 of the Business and Professions Code is amended to read:

25608. Every person who possesses, consumes, sells, gives, or delivers to any other person, any alcoholic beverage in or on any public schoolhouse or any of the grounds thereof, is guilty of a misdemeanor. This section does not, however, make it unlawful for any person to acquire, possess, or use any alcoholic beverage in or on any public schoolhouse, or on any grounds thereof, if any of the following applies:

(a) The alcoholic beverage is acquired, possessed, or used in connection with a course of instruction given at the school and the person has been authorized to acquire, possess, or use it by the governing body or other administrative head of the school.

(b) The public schoolhouse is surplus school property and the grounds thereof are leased to a lessee which is a general law city with a population of less than 50,000, or the public schoolhouse is surplus school property and the grounds thereof are located in an unincorporated area and are leased to a lessee which is a civic organization, and the property is to be used for community center purposes and no public school education is to be conducted thereon by either the lessor or the lessee and the property is not being used by persons under the age of 21 years for recreational purposes at any time during which alcoholic beverages are being sold or consumed on the premises.

(c) The alcoholic beverages are acquired, possessed, or used during events at a college-owned or college-operated veterans stadium with a capacity of over 12,000 people, located in a county with a population of over six million people. As used in this subdivision, "events" mean football games sponsored by a college, other than a public community college, or other events sponsored by noncollege groups.

(d) The alcoholic beverages are acquired, possessed, or used during an event not sponsored by any college at a performing arts facility built on property owned by a community college district and leased to a nonprofit organization which is a public benefit corporation formed under Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code. As used in this subdivision, "performing arts facility" means an auditorium with more than 300 permanent seats.

(e) The alcoholic beverage is wine for sacramental or other religious purposes and is used only during authorized religious services held on or before January 1, 1995.

(f) The alcoholic beverages are acquired, possessed, or used during an event at a community center owned by a community services district and the event is not held at a time when students are attending a public school sponsored activity at the center.

(g) The alcoholic beverage is wine which is acquired, possessed, or used during an event sponsored by a community college district or an organization operated for the benefit of the community college district where the college district maintains both an instructional program in viticulture on no less than five acres of land owned by the district and an instructional program in enology, which includes sales and marketing.

(h) The alcoholic beverage is acquired, possessed, or used at a professional minor league baseball game conducted at the stadium of a community college located in a county with a population of less than 250,000 inhabitants, and the baseball game is conducted pursuant to a contract between the community college district and a professional sports organization.

(i) The alcoholic beverages are acquired, possessed, or used during events at a college-owned or college-operated stadium or other facility. As used in this subdivision, "events" means fundraisers held to benefit a nonprofit corporation that has obtained a license pursuant to this division for the event. "Events" does not include football games or other athletic contests sponsored by any college or public community college. This subdivision shall not apply to any public education facility in which any grade from kindergarten to grade 12, inclusive, is schooled.

(j) The alcoholic beverages are possessed, consumed, or sold, pursuant to a license obtained under this division, for an event during the weekend or at other times when pupils are not on the grounds of an overnight retreat facility owned and operated by a county office of education in a county of the 18th class.

Any person convicted of a violation of this section shall, in addition to the penalty imposed for the misdemeanor, be barred from having or receiving any privilege of the use of public school property which

is accorded by Article 2 (commencing with Section 82537) of Chapter 8 of Part 49 of the Education Code.

CHAPTER 640

An act to amend Section 229.40 of the Streets and Highways Code, relating to highways.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 229.40 of the Streets and Highways Code is amended to read:

229.40. This chapter shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2004, deletes or extends that date.

CHAPTER 641

An act to amend Sections 10148, 10229, 10230, 10231, 10231.1, 10232, 10232.4, 10232.5, 10233, 10234.5, 10236.4, 10450.6, and 10471 of, and to add Section 10236.6 to, the Business and Professions Code, and to amend Sections 17006 and 17314.1 of the Financial Code, relating to real estate brokers, and making an appropriation therefor.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 10148 of the Business and Professions Code is amended to read:

10148. (a) A licensed real estate broker shall retain for three years copies of all listings, deposit receipts, canceled checks, trust records, and other documents executed by him or her or obtained by him or her in connection with any transactions for which a real estate broker license is required. The retention period shall run from the date of the closing of the transaction or from the date of the listing if the transaction is not consummated. After notice, the books, accounts, and records shall be made available for examination, inspection, and copying by the commissioner or his or her designated representative during regular business hours; and shall, upon the

appearance of sufficient cause, be subject to audit without further notice, except that the audit shall not be harassing in nature.

(b) The commissioner shall charge a real estate broker for the cost of any audit, if the commissioner has found, in a final desist and refrain order issued under Section 10086 or in a final decision following a disciplinary hearing held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that the broker has violated Section 10145 or a regulation or rule of the commissioner interpreting Section 10145.

(c) If a broker fails to pay for the cost of an audit as described in subdivision (b) within 60 days of mailing a notice of billing, the commissioner may suspend or revoke the broker's license or deny renewal of the broker's license. The suspension or denial shall remain in effect until the cost is paid or until the broker's right to renew a license has expired.

The commissioner may maintain an action for the recovery of the cost in any court of competent jurisdiction. In determining the cost incurred by the commissioner for an audit, the commissioner may use the estimated average hourly cost for all persons performing audits of real estate brokers.

SEC. 1.5. Section 10229 of the Business and Professions Code is amended to read:

10229. Any transaction that involves the sale of or offer to sell a series of notes secured directly by an interest in the same real property, or the sale of undivided interests in a note secured directly by real property equivalent to a series transaction, shall comply with all of the following, except as provided in paragraph (4) of subdivision (i), the terms "sale" and "offer to sell," as used in this section, shall have the same meaning as set forth in Section 25017 of the Corporations Code and include the acts of negotiating and arranging the transaction:

(a) A notice in the following form and containing the following information shall be filed with the commissioner within 30 days after the first transaction and within 30 days of any material change in the information required in the notice:

TO: Real Estate Commissioner
Mortgage Loan Section
2201 Broadway
Sacramento, CA 95818

This notice is filed pursuant to Section 10229 of the Business and Professions Code.

( ) Original Notice ( ) Amended Notice

1. Name of Broker conducting transaction under Section 10229:

_____

2. Firm name (if different from "1"):

_____

3. Street address (main location):

_____

and Street City State ZIP Code

4. Mailing address (if different from "3"):

_____

5. Servicing Agent: Identify the person or persons who will act as the servicing agent in transactions pursuant to Section 10229 (including the undersigned Broker if that is the case):

_____

_____

6. Inspection of trust account (before answering this question, review the provisions of paragraph (3) of subdivision (j) of Section 10229).

CHECK ONLY ONE OF THE FOLLOWING:

( ) The undersigned Broker is (or expects to be) required to file reports of inspection of its trust account(s) with the Real Estate Commissioner pursuant to paragraph (3) of subdivision (j) of Section 10229.

( ) The undersigned Broker is NOT (or does NOT expect to be) required to file reports of inspection of its trust account(s) with the Real Estate Commissioner pursuant to paragraph (3) of subdivision (j) of Section 10229.

7. Signature. The contents of this notice are true and correct.

Date	Type Name of Broker

Signature of Broker or of Designated Officer of Corporate Broker

Type Name of Person(s) Signing This Notice

NOTE: AN AMENDED NOTICE MUST BE FILED BY THE BROKER WITHIN 30 DAYS OF ANY MATERIAL CHANGE IN THE INFORMATION REQUIRED TO BE SET FORTH HEREIN.

(b) All advertising employed for transactions under this section shall (1) show the name of the broker and (2) comply with Section 260.302 of Title 10 of the California Code of Regulations, Section 10235 of the Business and Professions Code, and Section 2848 of Title 10 of the California Code of Regulations. Brokers and their agents are cautioned that a reference to a prospective investor that a transaction is conducted under this section may be deemed misleading or deceptive if this representation may reasonably be construed by the investor as an implication of merit or approval of the transaction.

(c) The real property directly securing the notes or interests is located in this state, the note or notes are not by their terms subject to subordination to any subsequently created deed of trust upon the real property, and the note or notes are not promotional notes secured by liens on separate parcels of real property in one subdivision or in contiguous subdivisions. For purposes of this subdivision, a promotional note means a promissory note secured by a trust deed executed on unimproved real property or executed after construction of an improvement of the property but before the first purchase of the property as so improved, or executed as a means of financing the first purchase of the property as so improved, and which is subordinate or which by its terms may become subordinate to any other trust deed on the property. However, the term "promotional note" does not include either of the following:

(1) A note that was executed in excess of three years prior to being offered for sale.

(2) A note secured by a first trust deed on real property in a subdivision, which evidences a bona fide loan made in connection with the financing of the usual cost of the development in a residential, commercial, or industrial building or buildings on the

property under a written agreement providing for the disbursement of the loan funds as costs are incurred or in relation to the progress of the work and providing for title insurance ensuring the priority of the security as against mechanic's and materialmen's liens or for the final disbursement of at least 10 percent of the loan funds after the expiration of the period of the filing of mechanic's and materialmen's liens.

(d) (1) The notes or interests are sold by or through a real estate broker, as principal or agent. At the time the interests are originally sold or assigned, neither the broker nor an affiliate of the broker shall have an interest as owner, lessor, or developer of the property securing the loan, or any contractual right to acquire, lease, or develop the property securing the loan. This provision shall not prohibit a broker from conducting the following transactions if, in either case, the disclosure statement furnished by the broker pursuant to subdivision (k) discloses the interest of the broker or affiliate in the transaction and the circumstances under which the broker or affiliate acquired the interest:

(A) A transaction in which the broker or an affiliate of the broker is acquiring the property pursuant to a foreclosure under, or sale pursuant to, a deed of trust securing a note for which the broker is the servicing agent or which the broker sold to the holder or holders.

(B) A transaction in which the broker or an affiliate of the broker is reselling from inventory property acquired by the broker pursuant to a foreclosure under, or sale pursuant to, a deed of trust securing a note for which the broker is the servicing agent or which the broker sold to the holder or holders.

(2) For the purposes of this subdivision, the following definitions apply:

(A) "Broker" means a person licensed as a broker under any of the provisions of this part.

(B) "Affiliate" means a person controlled by, controlling, or under common control with, the broker.

(e) (1) The notes or interests shall not be sold to more than 10 persons, each of whom meets one or both of the qualifications of income or net worth set forth below and who signs a statement, which shall be retained by the broker for four years conforming to the following:

Transaction Identifier: _____

Name of Purchaser: _____ Date: _____

Check either one of the following, if true.

( ) My investment in the transaction does not exceed 10% of my net worth, exclusive of home, furnishings, and automobiles.

( ) My investment in the transaction does not exceed 10% of my adjusted gross income for federal income tax purposes for my last tax year, or in the alternative, as estimated for the current year.

_____

Signature

(2) The number of offerees shall not be considered for the purposes of this section.

(3) A husband and wife and their dependents, and an individual and his or her dependents, shall be counted as one person.

(4) A retirement plan, trust, business trust, corporation, or other entity that is wholly owned by an individual, and the individual's spouse, or the individual's dependents, or any combination thereof, shall not be counted separately from the individual but the investments of these entities shall be aggregated with those of the individual for the purposes of the statement required by paragraph (1). If the investments of any entities are required to be aggregated under this subdivision, the adjusted gross income or net worth of these entities may also be aggregated with the net worth, or both, income of the individual.

(5) The "institutional investors" enumerated in subdivision (i) of Section 25102 or subdivision (c) of Section 25104 of the Corporations Code, or in a rule adopted pursuant thereto shall not be counted.

(f) The notes or interests of the purchasers shall be identical in their underlying terms including the right to direct or require foreclosure, rights to and rate of interest, and other incidents of being a lender, and the sale to each purchaser pursuant to this section shall be upon the same terms, subject to adjustment for the face or principal amount or percentage interest purchased and for interest earned or accrued. This subdivision shall not preclude different selling prices for interests to the extent that these differences are reasonably related to changes in the market value of the loan occurring between the sales of these interests. The interest of each purchaser shall be recorded.

(g) (1) Except as provided in paragraph (2), the aggregate principal amount of the notes or interests sold, together with the unpaid principal amount of any encumbrances upon the real property senior thereto, shall not exceed the following percentages of the current market value of the real property as determined in writing by the broker or appraiser pursuant to Section 10232.6 plus the amount for which the payment of principal and interest in excess of the percentage of current market value is insured for the benefit

of the holders of the notes or interests by an insurer admitted to do business in this state by the Insurance Commissioner:

(A)	Single–family residence, owner–occupied	80%
(B)	Single–family residence, not owner–occupied	75%
(C)	Commercial and income–producing properties	65%
(D)	Single–family residentially zone lot or parcel which has installed off–site improvements including drainage, curbs, gutters, sidewalks, paved roads, and utilities as mandated by the political subdivision having jurisdiction over the lot or parcel	65%
(E)	Land which has been zoned for (and if required, approved for subdivision as) commercial or residential development	50%
(F)	Other real property	35%

(2) The percentage amounts specified in paragraph (1) may be exceeded when and to the extent that the broker determines that the encumbrance of the property in excess of these percentages is reasonable and prudent considering all relevant factors pertaining to the real property. However, in no event shall the aggregate principal amount of the notes or interests sold, together with the unpaid principal amount of any encumbrances upon the property senior thereto, exceed 80 percent of the current fair market value of improved real property or 50 percent of the current fair market value of unimproved real property, except in the case of a single-family zoned lot or parcel as defined in paragraph (1), which shall not exceed 65 percent of the current fair market value of that lot or parcel, plus the amount insured as specified in paragraph (1). A written statement shall be prepared by the broker that sets forth the material considerations and facts that the broker relies upon for his or her determination which shall be retained as a part of the broker's record of the transaction. Either a copy of the statement or the information contained therein shall be included in the disclosures required pursuant to subdivision (k).

(3) A copy of the appraisal or the broker's evaluation shall be delivered to each purchaser. The broker shall advise purchasers of their right to receive a copy. For purposes of this paragraph, "appraisal" means a written estimate of value based upon the assembling, analyzing, and reconciling of facts and value indicators for the real property in question. A broker shall not purport to make an appraisal unless the person so employed is qualified on the basis of special training, preparation, or experience.

(h) The documentation of the transaction shall require that (1) a default upon any interest or note is a default upon all interests or

notes, and (2) the holders of more than fifty percent of the record beneficial interests of the notes or interests may be governed by the actions to be taken on behalf of all holders in accordance with Section 2941.9 of the Civil Code in the event of default or foreclosure for matters that require direction or approval of the holders, including designation of the broker, servicing agent, or other person acting on their behalf, and the sale, encumbrance, or lease of real property owned by the holders resulting from foreclosure or receipt of a deed in lieu of foreclosure. The terms called for by this subdivision may be included in the deed of trust, in the assignment of interests, or in any other documentation as is necessary or appropriate to make them binding on the parties.

(i) (1) The broker shall not accept any purchase or loan funds or other consideration from a prospective lender or purchaser, or directly or indirectly cause the funds or other consideration to be deposited in an escrow or trust account, except as to a specific loan or note secured by deed of trust that the broker owns, is authorized to negotiate, or is unconditionally obligated to buy.

(2) All funds received by the broker from the purchasers or lenders shall be handled in accordance with Section 10145 for disbursement to the persons thereto entitled upon recordation of the interests of the purchasers or lenders in the note and deed of trust. No provision of this section shall be construed as modifying or superseding applicable law regulating the escrow holder in any transaction or the handling of the escrow account.

(3) The books and records of the broker or servicing agent, or both, shall be maintained in a manner that readily identifies transactions under this section and the receipt and disbursement of funds in connection with these transactions.

(4) If required by paragraph (3) of subdivision (j), the review by the independent certified public accountant shall include a sample of transactions as reflected in the records of the trust account required pursuant to paragraph (1) of subdivision (j), and the bank statements and supporting documents. These documents shall be reviewed for compliance with this section with respect to the handling and distribution of funds. The sample shall be selected at random by the accountant from all these transactions and shall consist of the following: (A) three sales made or 5 percent of the sales made pursuant to this section during the period for which the examination is conducted, whichever is greater, and (B) 10 payments processed or 2 percent of payments processed under this exemption during the period for which the examination is conducted, whichever is greater. The transaction that constitutes a "sale," for purposes of this subdivision, is the series of transactions by which a series of notes of a maker, or the interests in the note of a maker, are sold or issued to their various purchasers under this section, including all receipts and disbursements in that process of funds received from the purchasers or lenders. The transaction that constitutes a "payment,"

for the purposes of this subdivision, is the receipt of a payment from the person obligated on the note, or from some other person on behalf of the person so obligated, including the broker or servicing agent, and the distribution of that payment to the persons entitled thereto. If a payment involves an advance paid by the broker or servicing agent as the result of a dishonored check, the inspection shall identify the source of funds from which the payment was made or, in the alternative, the steps that are reasonably necessary to determine that there was not a disbursement of trust funds. The specific provisions of this section, compliance with which is to be inspected by the accountant, are the following: paragraphs (1), (2), and (3) of subdivision (i) and paragraphs (1) and (2) of subdivision (j).

(5) Within 30 days of the close of the period for which the report is made, or within any additional time as the commissioner may in writing allow in a particular case, the accountant shall forward to the broker or servicing agent, as the case may be, and to the commissioner, the report of the accountant, stating that the inspection was performed in accordance with this section, listing the sales and the payments examined, specifying the nature of the deficiencies, if any, noted by the accountant with respect to each sale or payment, together with any further information as the accountant may wish to include, such as corrective steps taken with respect to any deficiency so noted, or stating that no deficiencies were observed. If the broker meets the threshold criteria of Section 10232, the report of the accountant shall be submitted as part of the quarterly reports required under Section 10232.25.

(j) The notes or interests shall be sold subject to a written agreement that obligates a licensed real estate broker, or a person exempted from the licensing requirement for real estate brokers under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4, to act as agent for the purchasers or lenders to service the note or notes and deed of trust, including the receipt and transmission of payments and the institution of foreclosure proceedings in the event of a default. A copy of this servicing agreement shall be delivered to each purchaser. The broker shall offer to the lenders or purchasers the services of the broker or one or more affiliates of the broker, or both, as servicing agent for each transaction conducted pursuant to this section. The agreement shall require all of the following:

(1) (A) That payments received on the note or notes be immediately deposited to a trust account maintained in accordance with the provisions of law and rules for trust accounts of licensed real estate brokers contained in Section 10145 of this code and Article 15 (commencing with Section 2830) of Chapter 6 of Title 10 of the California Code of Regulations and in accordance with this section.

(B) That these payments shall not be commingled with the assets of the servicing agent or used for any transaction other than the transaction for which the funds are received.

(2) That payments received on the note or notes shall be transmitted to the purchasers or lenders pro rata according to their respective interests within 25 days after receipt thereof by the agent. If the source for the payment is not the maker of the note, the agent shall inform the purchasers or lenders of the source for payment. A broker or servicing agent who transmits to the purchaser or lenders the broker's or servicing agent's own funds to cover payments due from the borrower but unpaid as a result of a dishonored check may recover the amount of the advances from the trust fund when the past due payment is received. However, nothing contained in this section shall authorize the broker, servicing agent, or any other person to issue, or to engage in any practice constituting, any guarantee, or to engage in the practice of advancing payments on behalf of the borrower.

(3) If the broker, directly or through an affiliate, is the servicing agent for notes or interests sold pursuant to this section upon which the payments due during any period of three consecutive months in the aggregate exceed one hundred twenty-five thousand dollars ($125,000) or the number of persons entitled to the payments exceeds 120, the trust account or accounts of that broker or affiliate shall be inspected at no less than three-month intervals during which the volume is maintained, by an independent certified public accountant. Within 30 days after the close of the period for which the review is made, the report of the accountant shall be forwarded as provided in paragraph (5) of subdivision (i). If the broker is required to file an annual report pursuant to subdivision (n) or Section 10232.2, the quarterly report pursuant to this subdivision need not be filed for the last quarter of the year for which the annual report is made. For the purposes of this subdivision, an affiliate of a broker is any person controlled by, controlling, or under common control with the broker.

(4) Unless the servicing agent will receive notice pursuant to Section 2924b of the Civil Code, the servicing agent shall file a request for notice of default upon any prior encumbrances and promptly notify the purchasers or lenders of any default on the prior encumbrances or on the note or notes subject to the servicing agreement.

(5) The servicing agent shall promptly forward copies of the following to each purchaser or lender:

(A) Any notice of trustee sale filed on behalf of the purchasers or lenders.

(B) Any request for reconveyance of the deed of trust received on behalf of the purchasers or lenders.

(k) The broker shall disclose in writing to each purchaser or lender the material facts concerning the transaction on a disclosure

form adopted or approved by the commissioner pursuant to Section 10232.5, subject to the following:

(1) The disclosure form shall include a description of the terms upon which the note and deed of trust are being sold, including the terms of the undivided interests being offered therein, including the following:

(A) In the case of the sale of an existing note:

(i) The aggregate sale price of the note.

(ii) The percent of the premium over or discount from the principal balance plus accrued but unpaid interest.

(iii) The effective rate of return to the purchasers if the note is paid according to its terms.

(iv) The name and address of the escrowholder for the transaction.

(v) A description of, and the estimated amount of, each cost payable by the seller in connection with the sale and a description of, and the estimated amount of, each cost payable by the purchasers in connection with the sale.

(B) In the case of the origination of a note:

(i) The name and address of the escrowholder for the transaction.

(ii) The anticipated closing date.

(iii) A description of, and the estimated amount of, each cost payable by the borrower in connection with the loan and a description of, and the estimated amount of, each cost payable by the lenders in connection with the loan.

(2) A copy of the written statement or information contained therein, as required under paragraph (2) of subdivision (g) shall be included in the disclosure form.

(3) Any interest of the broker or affiliate in the transaction as described in subdivision (d) shall be included with the disclosure form.

(4) When the particular circumstances of a transaction make information not specified in the disclosure form material, or essential to make the information provided in the form not misleading, and the other information is known to the broker, the other information shall also be provided by the broker.

(*l*) The broker or servicing agent shall furnish any purchaser of a note or interest, upon request, with the names and addresses of the purchasers of the other notes or interests in the loan.

(m) No agreement in connection with a transaction covered by this section shall grant to the real estate broker, the servicing agent, or any affiliate of the broker or agent the option or election to acquire the interests of the purchasers or lenders or to acquire the real property securing the interests. This subdivision shall not prohibit the broker or affiliate from acquiring the interests with the consent of the purchasers or lenders whose interests are being purchased, or the property with the consent of the purchasers or lenders, if the consent is given at the time of the acquisition.

(n) Each broker who conducts transactions under this section and meets the criteria of paragraph (3) of subdivision (j) shall file with the commissioner an annual report of a review of its trust account. The report shall be prepared and filed in accordance with subdivision (a) of Section 10232.2 and the rules and procedures thereunder of the commissioner. That report shall cover the broker's transactions under this section and if the broker also meets the threshold criteria set forth in Section 10232, the broker's transactions subject to that section shall be included as well.

(o) Each broker conducting transactions pursuant to this section and who meets the criteria of paragraph (3) of subdivision (j) shall file with the commissioner a report of the transactions which is prepared in accordance with subdivision (c) of Section 10232.2. If the broker also meets the threshold criteria of Section 10232, the report shall include the transactions subject to that section as well. This report shall be confidential pursuant to subdivision (f) of Section 10232.2.

(p) The jurisdiction of the Commissioner of Corporations under the Corporate Securities Law of 1968 shall be neither limited nor expanded by the provisions of the section. Nothing in this section shall be construed to supersede or restrict the application of the Corporate Securities Law of 1968. A transaction under this section shall not be construed to be a transaction involving the issuance of securities subject to authorization by the Real Estate Commissioner under subdivision (e) of Section 25100 of the Corporations Code.

(q) Nothing in this section shall be construed to change the agency relationships between the parties where they exist or to limit in any manner the fiduciary duty of brokers to borrowers, lenders, and purchasers of notes or interests, in transactions subject to this section.

SEC. 2. Section 10230 of the Business and Professions Code is amended to read:

10230. (a) The provisions of this article do not apply to the negotiation of a loan by or on behalf of a real estate broker in connection with a qualifying sale or exchange of real property in which the broker acted as the agent of one or more of the parties to the sale or exchange, nor to the sale or exchange by or on behalf of the broker of a promissory note created for the purpose of financing a qualifying real property sale or exchange transaction in which the broker acted as the agent of one or more of the parties to the qualifying real property sale or exchange regardless of the time of the sale or exchange of the promissory note. For the purposes of this subdivision, a "qualifying" sale or exchange of real property is one that is subject to the requirements of Article 3 (commencing with Section 2956) of Chapter 2 of Title 14 of Part 4 of Division 3 of the Civil Code.

(b) Subdivision (a) shall not apply to the negotiation of loans nor to sales or exchanges of promissory notes in connection with the

financing of a real property sale or exchange transaction in which the broker had a direct or indirect monetary interest as a party.

SEC. 3. Section 10231 of the Business and Professions Code is amended to read:

10231. Except as authorized by permit issued pursuant to the applicable provisions of the Corporate Securities Law of 1968 (Section 25000 et seq. of the Corporations Code), no person in doing any of the acts set forth in subdivision (d) of Section 10131, subdivision (e) of Section 10131, and Section 10131.1 shall accept any purchase or loan funds or other consideration from a prospective purchaser or lender, or directly or indirectly cause such funds or other consideration to be deposited in an escrow except as to a specific loan or a specific real property sales contract or promissory note secured directly or collaterally by a lien on real property on which loan, contract or note the person has a bona fide authorization to negotiate or to sell or which has been bought and completely paid for by the licensee, or has an unconditional written contract which obligates him to purchase a specific real property sales contract or promissory note secured directly or collaterally by a deed of trust.

SEC. 4. Section 10231.1 of the Business and Professions Code is amended to read:

10231.1. No person in doing any of the acts set forth in subdivision (d) of Section 10131, subdivision (e) of Section 10131, and Section 10131.1 shall, as agent or principal, retain funds payable according to the terms of a promissory note or real property sales contract secured directly or collaterally by a lien on real property, for a period longer than 25 days, except pursuant to a written agreement with the purchaser or lender.

SEC. 5. Section 10232 of the Business and Professions Code is amended to read:

10232. (a) Except as otherwise expressly provided, the provisions of Sections 10232.2, 10232.25, 10233, and 10236.6 are applicable to every real estate broker who intends or reasonably expects in a successive 12 months to do any of the following:

(1) Negotiate a combination of 10 or more of the following transactions pursuant to subdivision (d) or (e) of Section 10131 or Section 10131.1 in an aggregate amount of more than one million dollars ($1,000,000):

(A) Loans secured directly or collaterally by liens on real property or on business opportunities as agent for another or others.

(B) Sales or exchanges of real property sales contracts or promissory notes secured directly or collaterally by liens on real property or on business opportunities as agent for another or others.

(C) Sales or exchanges of real property sales contracts or promissory notes secured directly or collaterally by liens on real property as the owner of those notes or contracts.

(2) Make collections of payments in an aggregate amount of two hundred fifty thousand dollars ($250,000) or more on behalf of

owners of promissory notes secured directly or collaterally by liens on real property, owners of real property sales contracts, or both.

(3) Make collections of payments in an aggregate amount of two hundred fifty thousand dollars ($250,000) or more on behalf of obligors of promissory notes secured directly or collaterally by liens on real property, lenders of real property sales contracts, or both.

Persons under common management, direction or control in conducting the activities enumerated above shall be considered as one person for the purpose of applying the above criteria.

(b) The negotiation of a combination of two or more new loans and sales or exchanges of existing promissory notes and real property sales contracts of an aggregate amount of more than two hundred fifty thousand dollars ($250,000) in any three successive months or a combination of five or more new loans and sales or exchanges of existing promissory notes and real property sales contracts of an aggregate amount of more than five hundred thousand dollars ($500,000) in any successive six months shall create a rebuttable presumption that the broker intends to negotiate new loans and sales and exchanges of an aggregate amount that will meet the criteria of subdivision (a).

(c) In determining the applicability of Sections 10232.2, 10232.25, 10233, and 10236.6, loans or sales negotiated by a broker, or for which a broker collects payments or provides other servicing for the owner of the note or contract, shall not be counted in determining whether the broker meets the criteria of subdivisions (a) and (b) if any of the following apply:

(1) The lender or purchaser is any of the following:

(A) The Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, and the Veterans' Administration.

(B) A bank or subsidiary thereof, bank holding company or subsidiary thereof, trust company, savings bank or savings and loan association or subsidiary thereof, savings bank or savings association holding company or subsidiary thereof, credit union, industrial bank or industrial loan company, commercial finance lender, personal property broker, consumer finance lender, or insurer doing business under the authority of, and in accordance with, the laws of this state, any other state, or of the United States relating to banks, trust companies, savings banks or savings associations, credit unions, industrial banks or industrial loan companies, commercial finance lenders, or insurers, as evidenced by a license, certificate, or charter issued by the United States or a state, district, territory, or commonwealth of the United States.

(C) Trustees of a pension, profit-sharing, or welfare fund, if the pension, profit-sharing, or welfare fund has a net worth of not less than fifteen million dollars ($15,000,000).

(D) A corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or a wholly owned subsidiary of that corporation.

(E) A syndication or other combination of any of the entities specified in subparagraph (A), (B), (C), or (D) that is organized to purchase the promissory note.

(F) The California Housing Finance Agency or a local housing finance agency organized under the Health and Safety Code.

(G) A licensed residential mortgage lender or servicer acting under the authority of that license.

(H) An institutional investor that issues mortgage-backed securities, as specified in paragraph (11) of subdivision (i) of Section 50003 of the Financial Code.

(I) A licensed real estate broker selling all or part of the loan, the note, or the contract to a lender or purchaser specified in subparagraphs (A) to (H), inclusive, of this subdivision.

(2) The loan or sale is negotiated, or the loan or contract is being serviced for the owner, under authority of a permit issued pursuant to the provisions of Article 6 (commencing with Section 10237) or applicable provisions of the Corporate Securities Law of 1968 (Section 25000 et seq. of the Corporations Code).

(3) The transaction is subject to the requirements of Article 3 (commencing with Section 2956) of Chapter 2 of Title 14 of Part 4 of the Civil Code.

(d) If two or more real estate brokers who are not under common management, direction, or control, cooperate in the negotiation of a loan or the sale or exchange of a promissory note or real property sales contract and share in the compensation for their services, the dollar amount of the transaction shall be allocated according to the ratio that the compensation received by each broker bears to the total compensation received by all brokers for their services in negotiating the loan or sale or exchange.

(e) A real estate broker who on the effective date of this section satisfies the criteria of subdivision (a) or (b) shall, within 30 days thereafter, notify the Department of Real Estate in writing of that fact. A broker who first meets any of the criteria of subdivision (a) or (b) after January 1, 1982, shall notify the department in writing within 30 days after that determination is made.

SEC. 6. Section 10232.4 of the Business and Professions Code is amended to read:

10232.4. (a) In making a solicitation to a particular person and in negotiating with that person to make a loan secured by real property or to purchase a real property sales contract or a note secured by a deed of trust, a real estate broker shall deliver to the person solicited the applicable completed statement described in Section 10232.5 as early as practicable before he or she becomes obligated to make the loan or purchase and, except as provided in subdivision (c), before the receipt by or on behalf of the broker of any funds from that

person. The statement shall be signed by the prospective lender or purchaser and by the real estate broker, or by a real estate salesperson licensed to the broker, on the broker's behalf. When so executed, an exact copy shall be given to the prospective lender or purchaser, and the broker shall retain a true copy of the executed statement for a period of three years.

(b) The requirement of delivery of a disclosure statement pursuant to subdivision (a) shall not apply with respect to the following persons:

(1) The prospective purchaser of a security offered under authority of a permit issued pursuant to Article 6 (commencing with Section 10237) of this chapter or applicable provisions of the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code) which requires that each prospective purchaser of a security be given a prospectus or other form of disclosure statement approved by the department issuing the permit.

(2) The seller of real property who agrees to take back a promissory note of the purchaser as a method of financing all or a part of the purchase of the property.

(3) The prospective purchaser of a security offered pursuant to and in accordance with a regulation duly adopted by the Commissioner of Corporations granting an exemption from qualification under the Corporate Securities Law of 1968 for the offering if one of the conditions of the exemption is that each prospective purchaser of the security be given a disclosure statement prescribed by the regulation before the prospective purchaser becomes obligated to purchase the security.

(4) A prospective lender or purchaser, if that lender or purchaser is any of the following:

(A) The United States or any state, district, territory, or commonwealth thereof, or any city, county, city and county, public district, public authority, public corporation, public entity, or political subdivision of a state, district, territory, or commonwealth of the United States, or any agency or corporate or other instrumentality of any one or more of the foregoing, including the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, and the Veteran's Administration.

(B) Any bank or subsidiary thereof, bank holding company or subsidiary thereof, trust company, savings bank or savings and loan association or subsidiary thereof, savings bank or savings association holding company or subsidiary thereof, credit union, industrial bank or industrial loan company, personal property broker, commercial finance lender, consumer finance lender, or insurance company doing business under the authority of, and in accordance with, the laws of this state, any other state, or of the United States relating to

banks, trust companies, savings banks or savings associations, credit unions, industrial banks or industrial loan companies, commercial finance lenders, or insurance companies, as evidenced by a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States.

(C) Trustees of pension, profit-sharing, or welfare fund, if the pension, profit-sharing, or welfare fund has a net worth of not less than fifteen million dollars ($15,000,000).

(D) Any corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or any wholly owned subsidiary of that corporation.

(E) Any syndication or other combination of any of the entities specified in subparagraph (A), (B), (C), or (D) which is organized to purchase the promissory note.

(F) A licensed real estate broker engaging in the business of selling all or part of the loan, note, or contract to a lender or purchaser to whom no disclosure is required pursuant to this subdivision.

(G) A licensed residential mortgage lender or servicer when acting under the authority of that license.

(c) When the broker has custody of funds of a prospective lender or purchaser which were received and are being maintained with the express permission of the owner and in accordance with law, and the broker retains the funds in an escrow depository or a trust fund account pending receipt of the owner's express written instructions to disburse the funds for a loan or purchase, the broker shall cause the disclosure statement to be delivered to the owner and shall obtain the owner's written consent to the proposed disbursement before making the disbursement. Unless the broker has a written agreement with the owner as provided in Section 10231.1, the broker shall transmit to the owner not later than 25 days after receipt, all funds then in the broker's custody for which the owner has not given written instructions authorizing disbursement.

SEC. 7. Section 10232.5 of the Business and Professions Code is amended to read:

10232.5. (a) If the real estate broker is performing acts described in subdivision (d) of Section 10131 in negotiating a loan to be secured by a lien on real property or on a business opportunity, the statement required to be given to the prospective lender shall include, but shall not necessarily be limited to, the following information:

(1) Address or other means of identification of the real property that is to be the security for the borrower's obligation.

(2) Estimated fair market value of the securing property as determined by an appraisal, a copy of which shall be provided to the lender. However, a lender may waive the requirement of an independent appraisal in writing, on a case-by-case basis, in which case, the real estate broker shall provide the broker's written estimated fair market value of the securing property, which shall include the objective data upon which the broker's estimate is based.

(3) Age, size, type of construction and a description of improvements to the property if contained in the appraisal or as represented to the broker by the prospective borrower.

(4) Identity, occupation, employment, income, and credit data about the prospective borrower or borrowers as represented to the broker by the prospective borrower or borrowers.

(5) Terms of the promissory note to be given to the lender.

(6) Pertinent information concerning all encumbrances which constitute liens against the securing property and, to the extent of actual knowledge of the broker, pertinent information about other loans that the borrower expects or anticipates will result in a lien being recorded against the property securing the promissory note to be created in favor of the prospective lender.

As used in this paragraph, actual knowledge with respect to any anticipated or expected loan, means knowledge gained by the broker through arranging that other loan or receipt of written notification of that other loan. In this regard, the broker shall also provide to the prospective lender the option to apply to purchase a title insurance policy or an endorsement to an existing title insurance policy covering the securing property, and a copy of a written loan application, and a credit report.

(7) Provisions for servicing of the loan, if any, including disposition of the late charge and prepayment penalty fees paid by the borrower.

(8) Detailed information concerning any proposed arrangement under which the prospective lender along with persons not otherwise associated with him or her will be joint beneficiaries or obligees.

(9) If the solicitation is subject to the provisions of Section 10231.2, a detailed statement of the intended use and disposition of the funds being solicited including an explanation of the nature and extent of the benefits to be directly or indirectly derived by the broker.

(b) If the real estate broker is performing acts described in subdivision (e) of Section 10131 or in Section 10131.1 in negotiating the sale of a real property sales contract or promissory note secured directly by a lien on real property, the statement required to be given to the prospective purchaser by Section 10232.4 shall include, but shall not necessarily be limited to, the following information:

(1) Address or other means of identification of the real property that is the security for the trustor's or vendee's obligation.

(2) Estimated fair market value of the real property as determined by an appraisal, a copy of which shall be provided to the prospective purchaser. However, a purchaser may waive the requirement of an independent appraisal in writing, on a case-by-case basis, in which case, the real estate broker shall provide the broker's written estimated fair market value of the securing property, which shall include the objective data upon which the broker's estimate is based.

(3) Age, size, type of construction and a description of improvements to the real property if known by the broker.

(4) Information available to the broker relative to the ability of the trustor or vendee to meet his or her contractual obligations under the note or contract including the trustor's or vendee's payment history under the note or contract.

(5) Terms of the contract or note including the principal balance owing.

(6) Provisions for servicing of the note or contract, if any, including disposition of late charge, prepayment penalty or other fees or charges paid by the trustor or vendee.

(7) Detailed information concerning any proposed arrangement under which the prospective purchaser along with persons not otherwise associated with him or her will be joint beneficiaries or obligees. In this regard, the broker shall also provide to the prospective purchaser the option to apply to purchase a title insurance policy or an endorsement to an existing title insurance policy covering the real property and, if available from the seller of the note or contract or from the original lender, a copy of a written loan application, and a credit report.

(8) A statement as to whether the dealer is acting as a principal or as an agent in the transaction with the prospective purchaser.

SEC. 8. Section 10233 of the Business and Professions Code is amended to read:

10233. Any real estate licensee who undertakes to service a promissory note secured directly or collaterally by a lien on real property or a real property sales contract shall comply with each of the following requirements:

(a) The licensee shall have a written authorization from the borrower, the lender, or the owner of the note or contract, that is included within the terms of a written servicing agreement that satisfies the requirements of subdivision (j) of Section 10229.

(b) The licensee shall provide the lender or the owner of the note or contract with at least the following accountings:

(1) An accounting of the unpaid principal balance at the end of each year.

(2) An accounting of collections and disbursements received and made during each year.

(3) Each accounting required under this subdivision shall identify the person who holds the original note or contract and the deed of trust evidencing and securing the debt or obligation for which the accounting has been provided.

(c) The licensee shall provide to the lender or the owner of the note or contract written notification within 15 days of the occurrence of any of the following events:

(1) The recording of a notice of default.

(2) The recording of a notice of trustee's sale.

(3) The receipt of any payment constituting an amount greater than or equal to five monthly payments, together with a request for partial or total reconveyance of the real property, in which case the notice shall also indicate any further transfer or delivery instructions.

(4) The delinquency of any installment or other obligation under the note or contract for over 30 days.

SEC. 9. Section 10234.5 of the Business and Professions Code is amended to read:

10234.5. In addition to the requirements of Section 10234, in the placing of any loan, a broker shall deliver or cause to be delivered conformed copies of any deed of trust to both the investor or lender and the borrower within a reasonable amount of time from the date of recording.

SEC. 10. Section 10236.4 of the Business and Professions Code is amended to read:

10236.4. (a) In compliance with Section 10235.5, every licensed real estate broker shall also display his or her license number on all advertisements where there is a solicitation for borrowers or potential investors. In addition, the broker shall disclose in any such advertisement the license information telephone number established by the department.

(b) The disclosures required by Sections 10232.4 and 10240 shall include the licensee's license number and the department's license information telephone number.

(c) This section shall become operative July 1, 1998.

SEC. 11. Section 10236.6 is added to the Business and Professions Code, to read:

10236.6. (a) The commissioner, in his or her discretion, may audit any broker who conducts transactions subject to the provisions of this article. The audit shall be conducted after reasonable notice to the broker and shall include an examination of both of the following:

(1) Trust accounts under the control of the broker or in any manner affiliated with the broker.

(2) Nontrust accounts under the control of the broker or in any manner affiliated with the broker to which funds from trust accounts have been deposited other than for the payment of commissions, fees, costs, or expenses due to or incurred by the broker.

(b) The authority to audit these nontrust accounts shall be limited to instances where either an annual review or audit conducted by an independent certified public accountant or a departmental audit reveals unauthorized transfers of money to those accounts.

SEC. 12. Section 10450.6 of the Business and Professions Code is amended to read:

10450.6. There shall be separate accounts in the Real Estate Fund for purposes of real estate education and research and for purposes of recovery which shall be known respectively as the Education and Research Account and the Recovery Account. The commissioner

may, by regulation, require that up to 8 percent, or any lesser amount that he or she deems appropriate, of the amount of any license fee collected under this part be credited to the Education and Research Account. Twelve percent of the amount of any license fee collected shall be credited to the Recovery Account, provided, however, that if as of June 30 of any fiscal year the balance of funds in the Recovery Account is at least three million five hundred thousand dollars ($3,500,000), all funds in excess of this amount which have been credited to the Recovery Account shall instead be credited to the Real Estate Fund. As long as the balance of funds in the Recovery Account exceeds three million five hundred thousand dollars ($3,500,000), all license fees collected, except for the percentage of license fees credited to the Education and Research Account, shall be credited to the Real Estate Fund. Funds in the Education and Research Account shall be used by the commissioner in accordance with Section 10451.5. The Recovery Account is a continuing appropriation for carrying out Chapter 6.5 (commencing with Section 10470).

The amendments to this section made at the 1997–98 Regular Session shall become operative July 1, 2000.

SEC. 13. Section 10471 of the Business and Professions Code is amended to read:

10471. (a) When an aggrieved person obtains (1) a final judgment in a court of competent jurisdiction, including, but not limited to, a criminal restitution order issued pursuant to subdivision (f) of Section 1202.4 of the Penal Code or Section 3663 of Title 18 of the United States Code, or (2) an arbitration award that includes findings of fact and conclusions of law rendered in accordance with the rules established by the American Arbitration Association or another recognized arbitration body, and in accordance with Sections 1281 to 1294.2, inclusive, of the Code of Civil Procedure where applicable, and where the arbitration award has been confirmed and reduced to judgment pursuant to Section 1287.4 of the Code of Civil Procedure, against a defendant based upon the defendant's fraud, misrepresentation, or deceit, made with intent to defraud, or conversion of trust funds arising directly out of any transaction in which the defendant, while licensed under this part, performed acts for which a real estate license was required, the aggrieved person may, upon the judgment becoming final, file an application with the Department of Real Estate for payment from the Recovery Account, within the limitations specified in Section 10474, of the amount unpaid on the judgment that represents an actual and direct loss to the claimant in the transaction.

(b) The application shall be delivered in person or by certified mail to an office of the department not later than one year after the judgment has become final.

(c) The application shall be made on a form prescribed by the department, verified by the claimant, and shall include the following:

(1) The name and address of the claimant.

(2) If the claimant is represented by an attorney, the name, business address, and telephone number of the attorney.

(3) The identification of the judgment, the amount of the claim and an explanation of its computation.

(4) A detailed narrative statement of the facts in explanation of the allegations of the complaint upon which the underlying judgment is based.

(5) (A) Except as provided in subparagraph (B), a statement by the claimant, signed under penalty of perjury, that the complaint upon which the underlying judgment is based was prosecuted conscientiously and in good faith. As used in this section, "conscientiously and in good faith" means that no party potentially liable to the claimant in the underlying transaction was intentionally and without good cause omitted from the complaint, that no party named in the complaint who otherwise reasonably appeared capable of responding in damages was dismissed from the complaint intentionally and without good cause, and that the claimant employed no other procedural means contrary to the diligent prosecution of the complaint in order to seek to qualify for the Recovery Account.

(B) For the purpose of an application based on a criminal restitution order, all of the following statements by the claimant:

(i) The claimant has not intentionally and without good cause failed to pursue any person potentially liable to the claimant in the underlying transaction other than a defendant who is the subject of a criminal restitution order.

(ii) The claimant has not intentionally and without good cause failed to pursue in a civil action for damages all persons potentially liable to the claimant in the underlying transaction who otherwise reasonably appeared capable of responding in damages other than a defendant who is the subject of a criminal restitution order.

(iii) The claimant employed no other procedural means contrary to the diligent prosecution of the complaint in order to seek to qualify for the Recovery Account.

(6) The name and address of the judgment debtor or, if not known, the names and addresses of persons who may know the judgment debtor's present whereabouts.

(7) The following representations and information from the claimant:

(A) That he or she is not a spouse of the judgment debtor nor a personal representative of the spouse.

(B) That he or she has complied with all of the requirements of this chapter.

(C) That the judgment underlying the claim meets the requirements of subdivision (a).

(D) A description of searches and inquiries conducted by or on behalf of the claimant with respect to the judgment debtor's assets

liable to be sold or applied to satisfaction of the judgment, an itemized valuation of the assets discovered, and the results of actions by the claimant to have the assets applied to satisfaction of the judgment.

(E) That he or she has diligently pursued collection efforts against other judgment debtors and all other persons liable to the claimant in the transaction that is the basis for the underlying judgment.

(F) That the underlying judgment and debt have not been discharged in bankruptcy, or, in the case of a bankruptcy proceeding that is open at the time of the filing of the application, that the judgment and debt have been declared to be nondischargeable.

(G) That the application was mailed or delivered to the department no later than one year after the underlying judgment became final.

(d) If the claimant is basing his or her application upon a judgment against a salesperson, and the claimant has not obtained a judgment against that salesperson's employing broker, if any, or has not diligently pursued the assets of that broker, the application shall be denied for failure to diligently pursue the assets of all other persons liable to the claimant in the transaction unless the claimant can demonstrate, by clear and convincing evidence, either that the salesperson was not employed by a broker at the time of the transaction, or that the salesperson's employing broker would not have been liable to the claimant because the salesperson was acting outside the scope of his or her employment by the broker in the transaction.

(e) The application form shall include detailed instructions with respect to documentary evidence, pleadings, court rulings, the products of discovery in the underlying litigation, and a notice to the applicant of his or her obligation to protect the underlying judgment from discharge in bankruptcy, to be appended to the application.

(f) An application for payment from the Recovery Account that is based on a criminal restitution order shall comply with all of the requirements of this chapter. For the purpose of an application based on a criminal restitution order, the following terms have the following meanings:

(1) "Judgment" means the criminal restitution order.

(2) "Complaint" means the facts of the underlying transaction upon which the criminal restitution order is based.

(3) "Judgment debtor" means any defendant who is the subject of the criminal restitution order.

The amendments to this section made at the July 1997–98 Regular Session shall become operative July 1, 2000.

SEC. 14. Section 17006 of the Financial Code is amended to read:

17006. (a) This division does not apply to:

(1) Any person doing business under any law of this state or the United States relating to banks, trust companies, building and loan or savings and loan associations, or insurance companies.

(2) Any person licensed to practice law in California who has a bona fide client relationship with a principal in a real estate or personal property transaction and who is not actively engaged in the business of an escrow agent.

(3) Any person whose principal business is that of preparing abstracts or making searches of title that are used as a basis for the issuance of a policy of title insurance by a company doing business under any law of this state relating to insurance companies.

(4) Any broker licensed by the Real Estate Commissioner while performing acts in the course of or incidental to a real estate transaction in which the broker is an agent or a party to the transaction and in which the broker is performing an act for which a real estate license is required.

(b) The exemptions provided for in paragraphs (2) and (4) of subdivision (a) are personal to the persons listed, and those persons shall not delegate any duties other than duties performed under the direct supervision of those persons. Notwithstanding the provisions of this subdivision, the exemptions provided for in paragraphs (2) and (4) of subdivision (a) are not available for any arrangement entered into for the purpose of performing escrows for more than one business.

SEC. 15. Section 17314.1 of the Financial Code is amended to read:

17314.1. Notwithstanding any other provision of this article, Fidelity Corporation shall not be obligated to pay any claim made by a member unless (a) the claim would, except for the dollar amount thereof, be a valid claim under the bond as prescribed by Section 17203.1 and (b) the claim is made within the time prescribed by Section 17205. The protection to members provided by Fidelity Corporation and by the fidelity bond or insurance policy, if any, shall therefore be deemed to be coextensive except as to the dollar amounts as set forth in Section 17314. All defenses available to the insurer under the fidelity bond or insurance policy, if any, on any claim shall also be a defense to Fidelity Corporation on any claim brought against the corporation. No person other than a member, or the member's successor in interest, who shall be the commissioner, a conservator, receiver, or trustee as designated by a court of competent jurisdiction, is entitled to assert a claim against Fidelity Corporation for losses covered under this article.

SEC. 16. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 642

An act to amend Sections 17600, 17606.05, and 17606.20 of the Welfare and Institutions Code, relating to human services, and making an appropriation therefor.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 17600 of the Welfare and Institutions Code is amended to read:

17600. (a) There is hereby created the Local Revenue Fund, which shall have all of the following accounts:

(1) The Sales Tax Account.
(2) The Vehicle License Fee Account.
(3) The Vehicle License Collection Account.
(4) The Sales Tax Growth Account.
(5) The Vehicle License Fee Growth Account.

(b) The Sales Tax Account shall have all of the following subaccounts:

(1) The Mental Health Subaccount.
(2) The Social Services Subaccount.
(3) The Health Subaccount.
(4) The In-Home Supportive Services Registry Model Subaccount.

(c) The Sales Tax Growth Account shall have all of the following subaccounts:

(1) The Caseload Subaccount.
(2) The Base Restoration Subaccount.
(3) The Indigent Health Equity Subaccount.
(4) The Community Health Equity Subaccount.
(5) The Mental Health Equity Subaccount.
(6) The State Hospital Mental Health Equity Subaccount.
(7) The County Medical Services Subaccount.
(8) The General Growth Subaccount.
(9) The Special Equity Subaccount.

(d) Notwithstanding Section 13340 of the Government Code, the Local Revenue Fund is hereby continuously appropriated, without regard to fiscal years, for the purpose of this chapter.

(e) The Local Revenue Fund shall be invested in the Surplus Money Investment Fund and all interest earned shall be distributed in January and July among the accounts and subaccounts in proportion to the amounts deposited into each subaccount, except as provided in subdivision (f).

(f) If a distribution required by subdivision (e) would cause a subaccount to exceed its limitations imposed pursuant to any of the following, the distribution shall be made among the remaining subaccounts in proportion to the amounts deposited into each subaccount in the six prior months:

(1) Subdivision (a) of Section 17605.

(2) Paragraph (1) of subdivision (a) of Section 17605.05.

(3) Subdivision (b) of Section 17605.10.

(4) Subdivision (c) of Section 17605.10.

SEC. 2. Section 17606.05 of the Welfare and Institutions Code is amended to read:

17606.05. (a) For the 1992–93 fiscal year, the Controller shall allocate to those counties that have a poverty-population shortfall, as described in subdivision (c), those funds deposited in the Indigent Health Equity Subaccount, the Community Health Equity Subaccount, the Mental Health Equity Subaccount, and the State Hospital Mental Health Equity Subaccount in accordance with the following tables and schedules:

(1) The Controller shall make monthly allocations from the amounts deposited in the Indigent Health Equity Subaccount to the health account in the local health and welfare trust fund in accordance with the following schedule:

County	Allocation Percentage
Alameda	9.377
Contra Costa	4.939
Fresno	6.964
Kern	4.362
Merced	1.889
Monterey	2.143
Placer	.959
Riverside	7.059
Sacramento	8.907
San Bernardino	10.804
San Diego	15.927
San Joaquin	4.855
San Luis Obispo	1.200
San Mateo	3.159
Santa Barbara	3.159

Santa Clara	3.159
Stanislaus	3.249
Tulare	3.262
Ventura	3.592
Yolo	1.038

(2) The Controller shall make monthly allocations from the amounts deposited in the Community Health Equity Subaccount to the health account in the local health and welfare trust fund in accordance with the following schedule:

County	Allocation Percentage
Butte	1.11
Calaveras	.13
Del Norte	.18
El Dorado	.54
Fresno	7.20
Glenn	.12
Humboldt	.71
Imperial	.72
Kern	4.81
Kings	.62
Lake	.35
Lassen	.15
Madera	.43
Marin	.84
Mariposa	.07
Mendocino	.54
Merced	1.53
Modoc	.05
Napa	.50
Nevada	.40
Placer	.63
Plumas	.12
Riverside	7.66
Sacramento	8.01
San Benito	.15
San Bernardino	11.76
San Diego	17.07
San Joaquin	3.91

San Luis Obispo	1.09
Santa Clara	13.88
Shasta	1.09
Sierra	.02
Siskiyou	.25
Solano	1.25
Sonoma	1.83
Stanislaus	2.90
Sutter	.67
Tehama	.29
Tulare	2.03
Tuolumne	.22
Ventura	3.34
Yolo	.84
City of Berkeley	____
City of Pasadena	____
City of Long Beach	____

(3) The Controller shall make monthly allocations from the amounts deposited in the State Hospital Mental Health Equity Subaccount to the mental health account in the local health and welfare trust fund in accordance with the following schedule:

County	Allocation Percentage
Amador	.055
Butte	1.957
Calaveras	.256
Del Norte	.291
El Dorado	1.011
Fresno	10.815
Glenn	.277
Humboldt	.747
Imperial	1.682
Kern	1.726
Kings	1.153
Lake	.470
Lassen	.150
Madera	1.192
Mariposa	.006
Mendocino	.478

Merced	2.924
Modoc	.007
Monterey	.684
Nevada	.021
Placer	.450
Plumas	.068
Riverside	5.538
Sacramento	9.423
San Benito	.010
San Bernardino	11.445
San Diego	19.331
San Joaquin	7.682
San Luis Obispo	1.119
Santa Barbara	.341
Santa Clara	5.264
Santa Cruz	.271
Shasta	.708
Siskiyou	.529
Stanislaus	3.309
Sutter	1.702
Tehama	.194
Trinity	.054
Tulare	5.074
Tuolumne	.104
Ventura	1.377
Yolo	.105
City of Berkeley	____

(4) The Controller shall make monthly allocations from the amounts deposited in the Mental Health Equity Subaccount to the mental health account in the local health and welfare trust fund in accordance with the following schedule:

County	Allocation Percentage
Butte	.379
Contra Costa	6.066
Fresno	7.113
Imperial	.711
Kern	5.387
Lake	.490

Lassen	.045
Los Angeles	28.142
Madera	.335
Merced	1.955
Napa	.046
Orange	2.794
Riverside	6.448
Sacramento	3.710
San Benito	.231
San Bernardino	19.414
Santa Cruz	2.171
Shasta	1.909
Solano	5.117
Stanislaus	3.717
Tulare	3.604
Tuolumne	.217
City of Berkeley	———

(b) (1) For the 1993–94 fiscal year and succeeding fiscal years, the Controller shall allocate, on a monthly basis, to the appropriate accounts of the local health and welfare trust fund those funds deposited into the Indigent Health Equity Subaccount, the Community Health Equity Subaccount, the Mental Health Equity Subaccount, and the State Hospital Mental Health Equity Subaccount in the Sales Tax Growth Account in accordance with a schedule prepared in accordance with subdivision (c) by the Department of Finance.

(2) The Department of Finance shall annually consult with the California State Association of Counties prior to submitting any schedule of allocations to the Controller.

(3) If deposits into the Indigent Health Equity Subaccount, the Community Health Equity Subaccount, the Mental Health Equity Subaccount, and the State Hospital Mental Health Equity Subaccount are not sufficient to eliminate poverty-population shortfalls as described in subdivision (c), each eligible jurisdiction shall receive an allocation which equals its pro rata share of funds in the subaccount based on the jurisdiction's percentage share of the poverty-population shortfall.

(c) (1) A poverty-population percentage shall be computed annually by the Department of Finance for each county, city, and city and county by averaging each jurisdiction's share of the state's total population and each jurisdiction's percentage share of the state's total cash-grant certified CalWORKs and SSI/SSP eligible populations residing in the county, city, or city and county, as determined by the Department of Finance. For purposes of calculating the

poverty-population percentage for the State Hospital Mental Health Equity Subaccount and the Indigent Health Equity Subaccount, beginning with the 1995–96 allocation, the population and poverty figures for the cities shall be assigned to the county in which each city is located.

(2) (A) For each subaccount, the Department of Finance shall calculate the poverty-population shortfall for each county, city, and city or county, which received funding from the state, including any equity allocation made pursuant to this section, in the prior fiscal year and excluding any transfers to or from other subaccounts under Section 17600.20.

(B) The poverty-population shortfalls shall be calculated for the following programs or funding sources:

(i) State funding under Part 4.5 (commencing with Section 16700), as operative on June 29, 1991, for indigent health programs.

(ii) State funding under Part 4.5 (commencing with Section 16700), as operative on June 29, 1991, for community health programs.

(iii) Funding provided for purposes of the implementation of Division 5 (commencing with Section 5000) for the organization and financing of community mental health programs, including funding for the purchase of state hospital services, funding for services provided by institutes for mental diseases, and funding for services provided for under Chapter 1294 of the Statutes of 1989.

(C) The calculation shall identify the amount by which the allocations for the programs or funding sources identified in subparagraph (B) are less than the amount the jurisdiction would have received if its percentage share of the prior year funding had been equal to its poverty-population percentage.

(D) The calculation of the poverty-population shortfall for clause (iii) of subparagraph (B) shall include all allocations received pursuant to Section 5701, including all distributions made pursuant to subdivision (b) of Section 5701, unless those funds are intended for pilot program or demonstration projects or are exempted from this requirement by other provisions of law. Poverty-population shortfall calculations shall not include funds received through the state mandates claim process.

(E) (i) The Department of Finance shall recalculate the resource base used in determining the poverty-population shortfalls pursuant to subparagraph (B) for the 1994–95 fiscal year equity allocations according to this subparagraph. The resource base for each equity subaccount shall be reconstructed beginning with the resource bases to be used for allocating 1994–95 fiscal year growth.

(ii) For the State Hospital Mental Health Equity Subaccount, the Department of Finance shall use the 1990–91 fiscal year State Hospital Mental Health allocations as reported by the State Department of Mental Health.

(iii) For the Community Mental Health Equity Subaccount:

(I) The Department of Finance shall use the following resources reported by the State Department of Mental Health:

(ia) The final December 1992 distribution of resources associated with Institutes of Mental Disease.

(ib) The 1990–91 fiscal year community mental health allocations.

(ic) Allocations for services provided for under Chapter 1294 of the Statutes of 1989.

(II) The Department of Finance shall expand the resource base with the following nonrealigned funding sources, as allocated among counties:

(ia) 1991–92 fiscal year Cigarette and Tobacco Products Surtax allocations made under Chapter 1331 of the Statutes of 1989, Chapter 51 of the Statutes of 1990, and, for the 1994–95 fiscal year only, Chapter 1323 of the Statutes of 1990.

(ib) 1993–94 fiscal year federal homeless block grant allocations.

(ic) 1993–94 fiscal year mental health special education allocations.

(id) 1993–94 fiscal year allocations for the system of care for children, in accordance with Chapter 1229 of the Statutes of 1992.

(ie) 1993–94 fiscal year federal Substance Abuse and Mental Health Services Administration block grant funds.

(iv) For the Community Health Equity Subaccount and the Indigent Health Equity Subaccount, the Department of Finance shall use the historical resource base as allocated among the counties, cities, and city and county, as reported by the State Department of Health Services in the September 17, 1991, report of Indigent and Community Health Resources.

(v) The Department of Finance shall use these adjusted resource bases for the four equity subaccounts as provided in this subparagraph to calculate what the four 1994–95 fiscal year equity subaccount allocations would have been, and, together with 1994–95 fiscal year Base Restoration Subaccount allocations as adjusted according to subdivision (b) of Section 17605, to the Health and Mental Health Accounts, reconstruct the 1994–95 fiscal year realignment base for the 1995–96 allocation year for each city, county, and city and county for each equity subaccount. The Department of Finance shall use these adjusted resource bases to do both of the following:

(I) Distribute equity allocations for the 1995–96 fiscal year.

(II) With adjustments for growth in realigned funds, and annual changes that reflect funds allocated in the previous year from nonrealigned funds specified in this subdivision, calculate equity allocations in the 1996–97 fiscal year and fiscal years thereafter.

(3) For each subaccount, the Department of Finance shall total the amounts calculated in paragraph (2) and determine the percentage of that total represented by each amount.

(4) Each county's, city's, or city and county's percentage share of each subaccount specified in subdivision (b) of Section 17606.05 shall equal the percentage computed in paragraph (3).

(5) All calculations made pursuant to this subdivision shall be compiled and made available by the Department of Finance, upon request, to all counties, cities, and cities and counties eligible for funding pursuant to this subdivision, and cities and counties, receiving funding pursuant to this article at least 30 days prior to submission of schedules of allocations to the Controller.

SEC. 3. Section 17606.20 of the Welfare and Institutions Code is amended to read:

17606.20. (a) On or before the 27th day of each month, the Controller shall allocate money to each county, city, and city and county, as general purpose revenues, from revenues deposited in the Vehicle License Fee Growth Account in the Local Revenue Fund in amounts that are proportional to each county's, city's, or city and county's total allocation from the Sales Tax Growth Account, except amounts provided pursuant to Section 17605.

(b) Notwithstanding subdivision (a), for the 1998–99 fiscal year and fiscal years thereafter, if, after meeting the requirements of Section 17605, there are no funds remaining in the Sales Tax Growth Account to allocate to each county, city, and city and county pursuant to subdivisions (a) and (b) of Section 17605.07, Section 17605.08, or Section 17605.10, the Controller shall allocate the revenues deposited in the Vehicle License Fee Growth Account to each county, city, and city and county, as general purpose revenues, in the following manner:

(1) The Controller shall determine the amount of sales tax growth in the 1996–97 fiscal year which exceeded the requirements of Section 17605 in the 1996–97 fiscal year.

(2) The Controller shall determine the amount of sales tax growth allocated in the 1996–97 fiscal year to the County Medical Services Subaccount pursuant to subdivisions (a) and (b) of Section 17605.7, and to the Indigent Health Equity, Community Health Equity, Mental Health Equity, State Hospital Mental Health Equity, General Growth, and Special Equity Subaccounts pursuant to Section 17605.10.

(3) The Controller shall compute percentages by dividing the amounts determined in paragraph (2) by the amount determined in paragraph (1).

(4) For calculation purposes related to paragraph (5), the Controller shall apply the percentages determined in paragraph (3) to revenues in the Vehicle License Fee Growth Account to determine the amount of vehicle license fee growth revenues attributable to the County Medical Services , Indigent Health Equity, Community Health Equity, Mental Health Equity, State Hospital Mental Health Equity, General Growth, and Special Equity Subaccounts. This paragraph shall not require the Controller to

deposit vehicle license fee growth revenues into the subaccounts specified in this paragraph, and is solely for determining the distribution of vehicle license growth revenues to each county, city, and city and county.

(5) On or before the 27th day of each month, the Controller shall allocate money to each county, city, and city and county, as general purpose revenues, from revenues deposited in the Vehicle License Fee Growth Account in the Local Revenue Fund. These allocations shall be determined based on schedules developed by the Department of Finance pursuant to Sections 17606.05 and 17606.10, in consultation with the California State Association of Counties.

CHAPTER 643

An act to amend Section 2773.1 of, and to add Section 2773.15 to, the Public Resources Code, relating to mining.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 2773.1 of the Public Resources Code is amended to read:

2773.1. (a) Lead agencies shall require financial assurances of each surface mining operation to ensure reclamation is performed in accordance with the surface mining operation's approved reclamation plan, as follows:

(1) Financial assurances may take the form of surety bonds executed by an admitted surety insurer, as defined in subdivision (a) of Section 995.120 of the Code of Civil Procedure, irrevocable letters of credit, trust funds, or other forms of financial assurances specified by the board pursuant to subdivision (e), which the lead agency reasonably determines are adequate to perform reclamation in accordance with the surface mining operation's approved reclamation plan.

(2) The financial assurances shall remain in effect for the duration of the surface mining operation and any additional period until reclamation is completed.

(3) The amount of financial assurances required of a surface mining operation for any one year shall be adjusted annually to account for new lands disturbed by surface mining operations, inflation, and reclamation of lands accomplished in accordance with the approved reclamation plan.

(4) The financial assurances shall be made payable to the lead agency and the department. Financial assurances that were approved by the lead agency prior to January 1, 1993, and were made

payable to the State Geologist shall be considered payable to the department for purposes of this chapter. However, if a surface mining operation has received approval of its financial assurances from a public agency other than the lead agency, the lead agency shall deem those financial assurances adequate for purposes of this section, or shall credit them toward fulfillment of the financial assurances required by this section, if they are made payable to the public agency, the lead agency, and the department and otherwise meet the requirements of this section. In any event, if a lead agency and one or more public agencies exercise jurisdiction over a surface mining operation, the total amount of financial assurances required by the lead agency and the public agencies for any one year shall not exceed that amount which is necessary to perform reclamation of lands remaining disturbed. For purposes of this paragraph, a "public agency" may include a federal agency.

(b) If the lead agency or the board, following a public hearing, determines that the operator is financially incapable of performing reclamation in accordance with its approved reclamation plan, or has abandoned its surface mining operation without commencing reclamation, either the lead agency or the director shall do all of the following:

(1) Notify the operator by personal service or certified mail that the lead agency or the director intends to take appropriate action to forfeit the financial assurances and specify the reasons for so doing.

(2) Allow the operator 60 days to commence or cause the commencement of reclamation in accordance with its approved reclamation plan and require that reclamation be completed within the time limits specified in the approved reclamation plan or some other time period mutually agreed upon by the lead agency or the director and the operator.

(3) Proceed to take appropriate action to require forfeiture of the financial assurances if the operator does not substantially comply with paragraph (2).

(4) Use the proceeds from the forfeited financial assurances to conduct and complete reclamation in accordance with the approved reclamation plan. In no event shall the financial assurances be used for any other purpose. The operator is responsible for the costs of conducting and completing reclamation in accordance with the approved reclamation plan which are in excess of the proceeds from the forfeited financial assurances.

(c) Financial assurances shall no longer be required of a surface mining operation, and shall be released, upon written notification by the lead agency, which shall be forwarded to the operator and the director, that reclamation has been completed in accordance with the approved reclamation plan. If a mining operation is sold or ownership is transferred to another person, the existing financial assurances shall remain in force and shall not be released by the lead agency until new financial assurances are secured from the new

owner and have been approved by the lead agency in accordance with Section 2770.

(d) The lead agency shall have primary responsibility to seek forfeiture of financial assurances and to reclaim mine sites under subdivision (b). However, in cases where the board is not the lead agency pursuant to Section 2774.4, the director may act to seek forfeiture of financial assurances and reclaim mine sites pursuant to subdivision (b) only if both of the following occurs:

(1) The financial incapability of the operator or the abandonment of the mining operation has come to the attention of the director.

(2) The lead agency has been notified in writing by the director of the financial incapability of the operator or the abandonment of the mining operation for at least 15 days, and has not taken appropriate measures to seek forfeiture of the financial assurances and reclaim the mine site; and one of the following has occurred:

(A) The lead agency has been notified in writing by the director that failure to take appropriate measures to seek forfeiture of the financial assurances or to reclaim the mine site shall result in actions being taken against the lead agency under Section 2774.4.

(B) The director determines that there is a violation that amounts to an imminent and substantial endangerment to the public health, safety, or to the environment.

(C) The lead agency notifies the director in writing that its good faith attempts to seek forfeiture of the financial assurances have not been successful.

The director shall comply with subdivision (b) in seeking forfeiture of financial assurances and reclaiming mine sites.

(e) The board may adopt regulations specifying financial assurance mechanisms other than surety bonds, irrevocable letters of credit, and trust funds, which the board determines are reasonably available and adequate to ensure reclamation pursuant to this chapter, but these mechanisms may not include financial tests, or surety bonds executed by one or more personal sureties. These mechanisms may include reclamation bond pool programs.

(f) On or before March 1, 1993, the board shall adopt guidelines to implement this section. The guidelines are exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and are not subject to review by the Office of Administrative Law.

SEC. 2. Section 2773.15 is added to the Public Resources Code, to read:

2773.15. Notwithstanding Section 2773.1, a surety bond that was executed by any personal surety that was approved by the lead agency prior to February 13, 1998, to ensure that reclamation is performed in accordance with a reclamation plan approved by a lead agency prior to that date, may be utilized to satisfy the requirements of this chapter, if the amount of the financial assurance required to perform the approved reclamation plan, as amended or updated

from time to time, does not change from the amount approved prior to February 13, 1998.

SEC. 3. The Legislature finds and declares that the amendment of Section 2773.1 of the Public Resources Code made by Section 1 of this act does not constitute a change in, but is declaratory of, existing law.

CHAPTER 644

An act to amend Section 66013 of the Government Code, relating to land use.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 66013 of the Government Code is amended to read:

66013. (a) Notwithstanding any other provision of law, when a local agency imposes fees for water connections or sewer connections, or imposes capacity charges, those fees or charges shall not exceed the estimated reasonable cost of providing the service for which the fee or charge is imposed, unless a question regarding the amount of the fee or charge imposed in excess of the estimated reasonable cost of providing the services or materials is submitted to, and approved by, a popular vote of two-thirds of those electors voting on the issue.

(b) As used in this section:

(1) "Sewer connection" means the connection of a structure or project to a public sewer system.

(2) "Water connection" means the connection of a structure or project to a public water system, as defined in subdivision (f) of Section 116275 of the Health and Safety Code.

(3) "Capacity charge" means a charge for facilities in existence at the time a charge is imposed or charges for new facilities to be constructed in the future that are of benefit to the person or property being charged.

(4) "Local agency" means a local agency as defined in Section 66000.

(5) "Fee" means a fee for the physical facilities necessary to make a water connection or sewer connection, including, but not limited to, meters, meter boxes, and pipelines from the structure or project to a water distribution line or sewer main, and that does not exceed the estimated reasonable cost of labor and materials for installation of those facilities.

(c) A local agency receiving payment of a charge as specified in paragraph (3) of subdivision (b) shall deposit it in a separate capital facilities fund with other charges received, and account for the charges in a manner to avoid any commingling with other moneys of the local agency, except for investments, and shall expend those charges solely for the purposes for which the charges were collected. Any interest income earned from the investment of moneys in the capital facilities fund shall be deposited in that fund.

(d) For a fund established pursuant to subdivision (c), a local agency shall make available to the public, within 180 days after the last day of each fiscal year, the following information for that fiscal year:

(1) A description of the charges deposited in the fund.

(2) The beginning and ending balance of the fund and the interest earned from investment of moneys in the fund.

(3) The amount of charges collected in that fiscal year.

(4) An identification of all of the following:

(A) Each public improvement on which charges were expended and the amount of the expenditure for each improvement, including the percentage of the total cost of the public improvement that was funded with those charges if more than one source of funding was used.

(B) Each public improvement on which charges were expended that was completed during that fiscal year.

(C) Each public improvement that is anticipated to be undertaken in the following fiscal year.

(5) A description of each interfund transfer or loan made from the capital facilities fund. The information provided, in the case of an interfund transfer, shall identify the public improvements on which the transferred moneys are, or will be, expended. The information, in the case of an interfund loan, shall include the date on which the loan will be repaid, and the rate of interest that the fund will receive on the loan.

(e) The information required pursuant to subdivision (d) may be included in the local agency's annual financial report.

(f) The provisions of subdivisions (c) and (d) shall not apply to any of the following:

(1) Moneys received to construct public facilities pursuant to a contract between a local agency and a person or entity, including, but not limited to, a reimbursement agreement pursuant to Section 66003.

(2) Charges that are used to pay existing debt service or which are subject to a contract with a trustee for bondholders that requires a different accounting of the charges, or charges that are used to reimburse the local agency or to reimburse a person or entity who advanced funds under a reimbursement agreement or contract for facilities in existence at the time the charges are collected.

(3) Charges collected on or before December 31, 1998.

(g) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion imposing a fee or capacity charge subject to this section shall be brought pursuant to Section 66022.

(h) Fees and charges subject to this section are not subject to the provisions of Chapter 5 (commencing with Section 66000), but are subject to the provisions of Sections 66016, 66022, and 66023.

(i) The provisions of subdivisions (c) and (d) shall only apply to capacity charges levied pursuant to this section.

SEC. 2. The Legislature finds and declares that the provisions of this act are prospective, applying to fees or charges for water connections or sewer connections, or capacity charges collected on or after January 1, 1999. In enacting this act, the Legislature does not intend to affect the outcome of any case that may be pending before a court on January 1, 1999, including, but not limited to, the case of Capistrano Beach Water District v. TAJ, et al., (4th District Court of Appeal, Case No. G021735).

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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

CHAPTER 645

An act to add Section 2079.10a to the Civil Code, relating to real property disclosure.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 2079.10a is added to the Civil Code, to read:

2079.10a. (a) Every lease or rental agreement for residential real property and every contract for sale of real property, including a real property sales contract as defined in Section 2985, for residential real property comprising one to four dwelling units, shall contain, in not less than eight-point type, the following notice:

Notice: The California Department of Justice, sheriff's departments, police departments serving jurisdictions of 200,000 or

more and many other local law enforcement authorities maintain for public access a data base of the locations of persons required to register pursuant to paragraph (1) of subdivision (a) of Section 290.4 of the Penal Code. The data base is updated on a quarterly basis and a source of information about the presence of these individuals in any neighborhood. The Department of Justice also maintains a Sex Offender Identification Line through which inquiries about individuals may be made. This is a "900" telephone service. Callers must have specific information about individuals they are checking. Information regarding neighborhoods is not available through the "900" telephone service.

(b) Subject to subdivision (c), upon delivery of the notice to the lessee or transferee of the real property, the lessor, seller, or broker is not required to provide information in addition to that contained in the notice regarding the proximity of registered sex offenders. The information in the notice shall be deemed to be adequate to inform the lessee or transferee about the existence of a statewide data base of the locations of registered sex offenders and information from the data base regarding those locations. The information in the notice shall not give rise to any cause of action against the disclosing party by a registered sex offender.

(c) Notwithstanding subdivisions (a) and (b), nothing in this section shall alter any existing duty of the lessor, seller, or broker under any other statute or decisional law including, but not limited to, the duties of a lessor, seller, or broker under this article, or the duties a seller or broker under Article 1.5 (commencing with Section 1102) or Chapter 2 of Title 4 of Part 4 of Division 2.

(d) Subdivision (a) of this section shall apply only to written agreements and contracts that are entered into by the parties on or after July 1, 1999.

CHAPTER 646

An act to amend Sections 17274 and 24436.5 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 17274 of the Revenue and Taxation Code is amended to read:

17274. (a) Notwithstanding any other provisions in this part to the contrary, no deduction shall be allowed for interest, taxes,

depreciation, or amortization paid or incurred in the taxable year with respect to substandard housing located in this state, except as provided in subdivision (e).

(b) "Substandard housing" means occupied dwellings from which the taxpayer derives rental income or unoccupied or abandoned dwellings for which both of the following apply:

(1) (A) For occupied dwellings from which the taxpayer derives rental income, a state or local government regulatory agency has determined that the housing violates state law or local codes dealing with health, safety, or building.

(B) For dwellings that are unoccupied or abandoned for at least 90 days, a state or local government regulatory agency has cited the housing for conditions that constitute a serious violation of state law or local codes dealing with health, safety, or building, and that constitute a threat to public health and safety.

(2) Either of the following occur:

(A) After written notice of violation by the regulatory agency, specifying the applicability of this section, the housing has not been brought to a condition of compliance within six months after the date of the notice or the time prescribed in the notice, whichever period is later.

(B) Good faith efforts for compliance have not been commenced, as determined by the regulatory agency.

"Substandard housing" also means employee housing that has not, within 30 days of the date of the written notice of violation or the date for compliance prescribed in the written notice of violation, been brought into compliance with the conditions stated in the written notice of violation of the Employee Housing Act (Part 1 (commencing with Section 17000) of Division 13 of the Health and Safety Code) issued by the enforcement agency that specifies the application of this section. The regulatory agency may, for good cause shown, extend the compliance date prescribed in a violation notice.

(c) (1) When the period specified in paragraph (2) of subdivision (b) has expired without compliance, the regulatory agency shall mail to the taxpayer a notice of noncompliance. The notice of noncompliance shall be in a form and shall include information prescribed by the Franchise Tax Board, shall be mailed by certified mail to the taxpayer at the taxpayer's last known address, and shall advise the taxpayer of (A) an intent to notify the Franchise Tax Board of the noncompliance within 10 days unless an appeal is filed, (B) where an appeal may be filed, and (C) a general description of the tax consequences of the filing with the Franchise Tax Board. Appeals shall be made to the same body and in the same manner as appeals from other actions of the regulatory agency. If no appeal is made within 10 days or if after disposition of the appeal the regulatory agency is sustained, the regulatory agency shall notify, in writing, the Franchise Tax Board of the noncompliance.

(2) The notice of noncompliance shall contain the legal description or the lot and block numbers of the real property, the assessor's parcel number, and the name of the owner of record as shown on the latest equalized assessment roll. In addition, the regulatory agency shall, at the same time as notification of the notice of noncompliance is sent to the Franchise Tax Board, record a copy of the notice of noncompliance in the office of the recorder for the county in which the substandard housing is located that includes a statement of tax consequences that may be determined by the Franchise Tax Board. However, the failure to record a notice with the county recorder does not relieve the liability of any taxpayer nor does it create any liability on the part of the regulatory agency.

(3) The regulatory agency may charge the taxpayer a fee in an amount not to exceed the regulatory agency's costs incurred in recording any notice of noncompliance or issuing any release of that notice. The notice of compliance shall be recorded and shall serve to expunge the notice of noncompliance. The notice of compliance shall contain the same recording information required for the notice of noncompliance. No deduction by the taxpayer, or any other taxpayer who obtains title to the property subsequent to the recordation of the notice of noncompliance, shall be allowed for the items provided in subdivision (a) from the date of the notice of noncompliance until the date the regulatory agency determines that the substandard housing has been brought to a condition of compliance. The regulatory agency shall mail to the Franchise Tax Board and the taxpayer a notice of compliance, which notice shall be in the form and include the information prescribed by the Franchise Tax Board. In the event the period of noncompliance does not cover an entire taxable year, the deductions shall be denied at the rate of $^1/_{12}$ for each full month during the period of noncompliance.

(4) If the property is owned by more than one owner or if the recorded title is in the name of a fictitious owner, the notice requirements provided in subdivision (b) and this subdivision shall be satisfied for each owner if the notices are mailed to one owner or to the fictitious name owner at the address appearing on the latest available property tax bill. However, notices made pursuant to this subdivision do not relieve the regulatory agency from furnishing taxpayer identification information required to implement this section to the Franchise Tax Board.

(d) For the purposes of this section, a notice of noncompliance shall not be mailed by the regulatory agency to the Franchise Tax Board if any of the following occur:

(1) The housing was rendered substandard solely by reason of earthquake, flood, or other natural disaster except where the condition remains for more than three years after the disaster.

(2) The owner of the substandard housing has secured financing to bring the housing into compliance with those laws or codes that have been violated, causing the housing to be classified as

substandard, and has commenced repairs or other work necessary to bring the housing into compliance.

(3) The owner of substandard housing that is not within the meaning of housing accommodation as defined by subdivision (d) of Section 35805 of the Health and Safety Code has done both of the following:

(A) Attempted to secure financing to bring the housing into compliance with those laws or codes that have been violated, causing the housing to be classified as substandard.

(B) Been denied that financing solely because the housing is located in a neighborhood or geographical area in which financial institutions do not provide financing for rehabilitation of any of that type of housing.

(e) This section does not apply to deductions from income derived from property rendered substandard solely by reason of a change in applicable state or local housing standards unless the violations cause substantial danger to the occupants of the property, as determined by the regulatory agency which has served notice of violation pursuant to subdivision (b).

(f) The owner of substandard housing found to be in noncompliance shall, upon total or partial divestiture of interest in the property, immediately notify the regulatory agency of the name and address of the person or persons to whom the property has been sold or otherwise transferred and the date of the sale or transference.

(g) By July 1 of each year, the regulatory agency shall report to the appropriate legislative body of its jurisdiction all of the following information, for the preceding calendar year, regarding its activities to secure code enforcement, which shall be public information:

(1) The number of written notices of violation issued for substandard housing under subdivision (b).

(2) The number of violations complied with within the period prescribed in subdivision (b).

(3) The number of notices of noncompliance issued pursuant to subdivision (c).

(4) The number of appeals from those notices pursuant to subdivision (c).

(5) The number of successful appeals by owners.

(6) The number of notices of noncompliance mailed to the Franchise Tax Board pursuant to subdivision (c).

(7) The number of cases in which a notice of noncompliance was not sent pursuant to subdivision (d).

(8) The number of extensions for compliance granted pursuant to subdivision (b) and the mean average length of the extensions.

(9) The mean average length of time from the issuance of a notice of violation to the mailing of a notice of noncompliance to the Franchise Tax Board where the notice is actually sent to the Franchise Tax Board.

(10) The number of cases where compliance is achieved after a notice of noncompliance has been mailed to the Franchise Tax Board.

(11) The number of instances of disallowance of tax deductions by the Franchise Tax Board resulting from referrals made by the regulatory agency. This information may be filed in a supplemental report in succeeding years as it becomes available.

(h) The provisions of this section relating to substandard housing consisting of abandoned or unoccupied dwellings do not apply to any lender engaging in a "federally related transaction," as defined in Section 11302 of the Business and Professions Code, who acquires title through judicial or nonjudicial foreclosure, or accepts a deed in lieu of foreclosure. The exception provided in this subdivision covers only substandard housing consisting of abandoned or unoccupied dwellings involved in the federally related transaction.

SEC. 2. Section 24436.5 of the Revenue and Taxation Code is amended to read:

24436.5. (a) No deduction shall be allowed for interest, depreciation, taxes, or amortization paid or incurred in the income year under Section 24343, 24344, 24345, or 24349, with respect to substandard housing located in this state, except as provided in subdivision (e).

(b) "Substandard housing" means occupied dwellings from which the taxpayer derives rental income or unoccupied or abandoned dwellings for which both of the following apply:

(1) (A) For occupied dwellings from which the taxpayer derives rental income, a state or local government regulatory agency has determined that the housing violates state law or local codes dealing with health, safety, or building.

(B) For dwellings that are unoccupied or abandoned for at least 90 days, a state or local government regulatory agency has cited the housing for conditions that constitute a serious violation of state law or local codes dealing with health, safety, or building, and that constitute a threat to public health and safety.

(2) Either of the following occur:

(A) After written notice of violation by the regulatory agency, specifying the applicability of this section, the housing has not been repaired or brought to a condition of compliance within six months after the date of the notice or the time prescribed in the notice, whichever period is later.

(B) Good faith efforts for compliance have not been commenced, as determined by the regulatory agency.

"Substandard housing" also means employee housing that has not, within 30 days of the date of the written notice of violation or the date for compliance prescribed in the written notice of violation, been brought into compliance with the conditions stated in the written notice of violation of the Employee Housing Act (Part 1 (commencing with Section 17000) of Division 13 of the Health and Safety Code) issued by the enforcement agency that specifies the

application of this section. The regulatory agency may, for good cause shown, extend the compliance date prescribed in a violation notice.

(c) (1) When the period specified in paragraph (2) of subdivision (b) has expired without compliance, the government regulatory agency shall mail to the taxpayer a notice of noncompliance. The notice of noncompliance shall be in a form and shall include information prescribed by the Franchise Tax Board, shall be mailed by certified mail to the taxpayer at his or her last known address, and shall advise the taxpayer of (A) an intent to notify the Franchise Tax Board of the noncompliance within 10 days unless an appeal is filed, (B) where an appeal may be filed, and (C) a general description of the tax consequences of that filing with the Franchise Tax Board. Appeals shall be made to the same body and in the same manner as appeals from other actions of the regulatory agency. If no appeal is made within 10 days or if after disposition of the appeal the regulatory agency is sustained, the regulatory agency shall notify, in writing, the Franchise Tax Board of the noncompliance.

(2) The notice of noncompliance shall contain the legal description or the lot and block numbers of the real property, the assessor's parcel number, and the name of the owner of record as shown on the latest equalized assessment roll. In addition, the regulatory agency shall, at the same time as notification of the notice of noncompliance is sent to the Franchise Tax Board, record a copy of the notice of noncompliance in the office of the recorder for the county in which the substandard housing is located that includes a statement of tax consequences that may be determined by the Franchise Tax Board. However, the failure to record a notice with the county recorder does not relieve the liability of any taxpayer nor does it create any liability on the part of the regulatory agency.

(3) The regulatory agency may charge the taxpayer a fee in an amount not to exceed the regulatory agency's costs incurred in recording any notice of noncompliance or issuing any release of that notice. The notice of compliance shall be recorded and shall serve to expunge the notice of noncompliance. The notice of compliance shall contain the same recording information required for the notice of noncompliance. No deduction by the taxpayer, or any other taxpayer who obtains title to the property subsequent to the recordation of the notice of noncompliance, shall be allowed for the items provided in subdivision (a) from the date of the notice of noncompliance until the date the regulatory agency determines that the substandard housing has been brought to a condition of compliance. The regulatory agency shall mail to the Franchise Tax Board and the taxpayer a notice of compliance, which notice shall be in the form and include the information prescribed by the Franchise Tax Board. In the event the period of noncompliance does not cover an entire income year, the deductions shall be denied at the rate of $^{1}/_{12}$ for each full month during the period of noncompliance.

(4) If the property is owned by more than one owner or the recorded title is in the name of a fictitious owner, the notice requirements provided in subdivision (b) and this subdivision shall be satisfied for each owner if the notices are mailed to one owner or to the fictitious name owner at the address appearing on the latest available property tax bill. However, notices made pursuant to this subdivision shall not relieve the regulatory agency from furnishing taxpayer identification information required to implement this section to the Franchise Tax Board.

(d) For the purposes of this section, a notice of noncompliance shall not be mailed by the regulatory agency to the Franchise Tax Board if any of the following occur:

(1) The housing was rendered substandard solely by reason of earthquake, flood or other natural disaster except where the condition remains for more than three years after the disaster.

(2) The owner of the substandard housing has secured financing to bring the housing into compliance with those laws or codes that have been violated, causing the housing to be classified as substandard, and has commenced repairs or other work necessary to bring the housing into compliance.

(3) The owner of substandard housing that is not within the meaning of housing accommodation, as defined in subdivision (d) of Section 35805 of the Health and Safety Code, has done both of the following:

(A) Attempted to secure financing to bring the housing into compliance with those laws or codes that have been violated, causing the housing to be classified as substandard.

(B) Been denied that financing solely because the housing is located in a neighborhood or geographical area in which financial institutions do not provide financing for rehabilitation of any of that type of housing.

(e) The provisions of this section do not apply to deductions from income derived from property rendered substandard solely by reason of a change in applicable state or local housing standards unless those violations cause substantial danger to the occupants of the property, as determined by the regulatory agency which has served notice of violation pursuant to subdivision (b).

(f) The owner of substandard housing found to be in noncompliance shall, upon total or partial divestiture of interest in the property, immediately notify the regulatory agency of the name and address of the person or persons to whom the property has been sold or otherwise transferred and the date of the sale or transference.

(g) By July 1 of each year, the regulatory agency shall report to the appropriate legislative body of its jurisdiction all of the following information, for the preceding calendar year, regarding its activities to secure code enforcement, which shall be public information:

(1) The number of written notices of violation issued for substandard housing under subdivision (b).

(2) The number of violations complied with within the period prescribed in subdivision (b).

(3) The number of notices of noncompliance issued pursuant to subdivision (c).

(4) The number of appeals from those notices pursuant to subdivision (c).

(5) The number of successful appeals by owners.

(6) The number of notices of noncompliance mailed to the Franchise Tax Board pursuant to subdivision (c).

(7) The number of cases in which a notice of noncompliance was not sent pursuant to the provisions of subdivision (d).

(8) The number of extensions for compliance granted pursuant to subdivision (b) and the mean average length of the extensions.

(9) The mean average length of time from the issuance of a notice of violation to the mailing of a notice of noncompliance to the Franchise Tax Board where the notice is actually sent to the Franchise Tax Board.

(10) The number of cases where compliance is achieved after a notice of noncompliance has been mailed to the Franchise Tax Board.

(11) The number of instances of disallowance of tax deductions by the Franchise Tax Board resulting from referrals made by the regulatory agency. This information may be filed in a supplemental report in succeeding years as it becomes available.

(h) The provisions of this section relating to substandard housing consisting of abandoned or unoccupied dwellings do not apply to any lender engaging in a "federally related transaction," as defined in Section 11302 of the Business and Professions Code, who acquires title through judicial or nonjudicial foreclosure, or accepts a deed in lieu of foreclosure. The exception provided in this subdivision covers only substandard housing consisting of abandoned or unoccupied dwellings involved in the federally related transaction.

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 647

An act to add Chapter 9 (commencing with Section 11840) to Part 1 of Division 3 of Title 2 of the Government Code, and to add Section 1342.8 to the Health and Safety Code, relating to health care.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Chapter 9 (commencing with Section 11840) is added to Part 1 of Division 3 of Title 2 of the Government Code, to read:

CHAPTER 9. HEALTH CARE AUDITS

11840. The Legislature finds and declares all of the following:

(a) The current regulatory responsibility for medical services is spread among many governmental entities including all of the following:

(1) The Medical Board of California.

(2) The Department of Corporations.

(3) The State Department of Health Services.

(b) This overlapping jurisdiction has resulted in multiple and duplicative audits of many physician offices, additional expense and hiring of additional staff to respond to duplicate requests for medical records, and the review of confidential medical records by a growing number of governmental entities.

(c) In the interest of reducing the number of separate times various public and private agencies review confidential medical records, streamlining the regulatory process, and reducing the redundant reviews of the offices of physicians, it is the intent of the Legislature to coordinate, to the extent feasible, as many of these regulatory functions as possible.

(d) In addition to government audits of physician offices, numerous private entities also conduct reviews of physician offices.

(e) It is in the public interest to achieve ultimately a uniform system of private and public auditing of physician offices and, thus, streamline the process as much as possible.

SEC. 2. Section 1342.8 is added to the Health and Safety Code, to read:

1342.8. The State Department of Health Services and the department shall coordinate, to the extent feasible, audits or surveys of physician offices required by this chapter and by the managed care program under the Medi-Cal Act (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code) and for any physician office auditing required by this chapter.

CHAPTER 648

An act to amend Sections 22953 and 22959 of the Business and Professions Code, relating to tobacco.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 22953 of the Business and Professions Code is amended to read:

22953. (a) Except as provided in subdivision (b), all moneys collected as civil penalties pursuant to this division shall be deposited in the State Treasury to the credit of the Sale of Tobacco to Minors Control Account that is hereby established.

(b) Notwithstanding subdivision (a), all funds collected within any one fiscal year as civil penalties pursuant to this division that exceed the sum of three hundred thousand dollars ($300,000) shall be deposited in the General Fund.

SEC. 2. Section 22959 of the Business and Professions Code is amended to read:

22959. (a) The sum of two million dollars ($2,000,000) shall be transferred annually from the portion of the federal Substance Abuse Prevention and Treatment block grant moneys allocated to the State Department of Alcohol and Drug Programs for administrative purposes related to substance abuse programs, to the Sale of Tobacco to Minors Control Account.

(b) Upon appropriation by the Legislature, moneys in the Sale of Tobacco to Minors Control Account shall be expended by the state department to administer and enforce this division.

CHAPTER 649

An act to add Sections 40036 and 41041 to the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 40036 is added to the Revenue and Taxation Code, to read:

40036. (a) When necessary to ensure compliance with this part, the board may require any person subject to this part to place with it the security that the board determines. Security in the form of cash, insured deposits in banks or savings and loan institutions, or a bond or bonds duly executed by an admitted surety insurer, payable to the state, conditioned upon faithful performance of all of the requirements of this part and expressly providing for the payment of all taxes, penalties, and other obligations of the person arising out of this part, shall be held in trust to be used solely in the manner provided by this section. The amount of security shall be fixed by the board, not to exceed twice the estimated average quarterly liability

of persons filing for quarterly periods, determined in the manner that the board deems proper. Security held by the board shall be released after a three-year period in which the person has filed all returns and paid all tax due to the state under this part or any amount of tax required to be collected and paid to the state within the time required.

(b) If, when a person discontinues business, the board holds security pursuant to this section in the form of cash or insured deposits in banks or savings and loan institutions, the security when applied to the account of the taxpayer shall be deemed a payment on any liability of the person to the board on the date the business is discontinued.

(c) This section shall not apply to a taxpayer who either has timely filed all returns and paid all tax due to the state under this part for the three consecutive years prior to the effective date of this section, or has, on or before July 31, 1998, timely filed all returns and paid all tax due to the state under this part since the taxpayer registered with the board pursuant to Section 40035. However, the board may require security from any such taxpayer who fails to remain in compliance with the reporting and payment requirements of this part subsequent to the effective date of this section.

SEC. 2. Section 41041 is added to the Revenue and Taxation Code, to read:

41041. (a) When necessary to ensure compliance with this part, the board may require any person subject to this part to place with it the security that the board determines. Security in the form of cash, insured deposits in banks or savings and loan institutions, or a bond or bonds duly executed by an admitted surety insurer, payable to the state, conditioned upon faithful performance of all of the requirements of this part and expressly providing for the payment of all taxes, penalties, and other obligations of the person arising out of this part, shall be held in trust to be used solely in the manner provided by this section. The amount of security shall be fixed by the board, not to exceed twice the estimated average quarterly liability of persons filing for quarterly periods, or three times the estimated average monthly liability of persons filing for monthly periods, determined in the manner that the board deems proper. Security held by the board shall be released after a three-year period in which the person has filed all returns and paid all tax due to the state under this part or any amount of tax required to be collected and paid to the state within the time required.

(b) If, when a person discontinues business, the board holds security pursuant to this section in the form of cash or insured deposits in banks or savings and loan institutions, the security when applied to the account of the taxpayer shall be deemed a payment on any liability of the person to the board on the date the business is discontinued.

(c) This section shall not apply to a taxpayer who either has timely filed all returns and paid all tax due to the state under this part for the three consecutive years prior to the effective date of this section, or has, on or before July 31, 1998, timely filed all returns and paid all tax due to the state under this part since the taxpayer registered with the board pursuant to Section 41040. However, the board may require security from any such taxpayer who fails to remain in compliance with the reporting and payment requirements of this part subsequent to the effective date of this section.

CHAPTER 650

An act to amend Sections 1423, 1424, 1428, and 1428.1 of, and to add Section 1417.3 to, the Health and Safety Code, relating to long-term health care facilities.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 1417.3 is added to the Health and Safety Code, to read:

1417.3. The department shall promote quality in long-term health care facility services through specific activities that include, but are not limited to, all of the following:

(a) Research and evaluation of innovative facility resident care models.

(b) Provision of statewide training on effective facility practices.

(c) Response to facility requests for technical assistance regarding licensing and certification requirements, compliance with federal and state standards, and related operational issues.

SEC. 2. Section 1423 of the Health and Safety Code is amended to read:

1423. (a) If upon inspection or investigation the director determines that any nursing facility is in violation of any state or federal law or regulation relating to the operation or maintenance of the facility, or determines that any other long-term health care facility is in violation of any statutory provision or regulation relating to the operation or maintenance of the facility, the director shall promptly, but not later than 24 hours, excluding Saturday, Sunday, and holidays, after the director determines or has reasonable cause to determine that an alleged violation has occurred, issue a notice to correct the violation and of intent to issue a citation to the licensee. Before completing the investigation and making the determination whether to issue a citation, the department shall hold an exit conference with the licensee to identify the potential for issuing a

citation for any violation, discuss investigative findings, and allow the licensee to provide the department with additional information related to the violation. The department shall consider this additional information, in conjunction with information from the inspection or investigation, in determining whether to issue a citation, or whether other action would be appropriate. If the department determines that the violation warrants the issuing of a citation and an exit conference has been completed it shall either:

(1) Recommend the imposition of a federal enforcement remedy or remedies on a nursing facility in accordance with federal law; or

(2) Issue a citation pursuant to state licensing laws, and if the facility is a nursing facility, may recommend the imposition of a federal enforcement remedy other than a federal civil monetary penalty for a federal violation.

No violation may result in the issuance of both a citation pursuant to state laws and the recommendation that a federal civil monetary penalty be imposed. If a state citation is issued it shall be served upon the licensee within three days after completion of the investigation, excluding Saturday, Sunday, and holidays, unless the licensee agrees in writing to an extension of time. Service shall be effected either personally or by registered or certified mail. A copy of the citation shall also be sent to each complainant. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the statutory provision, standard, rule or regulation alleged to have been violated, the particular place or area of the facility in which it occurred, as well as the amount of any proposed assessment of a civil penalty. The name of any patient jeopardized by the alleged violation shall not be specified in the citation in order to protect the privacy of the patient. However, at the time the licensee is served with the citation, the licensee shall also be served with a written list of each of the names of the patients alleged to have been jeopardized by the violation, that shall not be subject to disclosure as a public record. The citation shall fix the earliest feasible time for the elimination of the condition constituting the alleged violation, when appropriate.

(b) Where no harm to patients, residents, or guests has occurred, a single incident, event, or occurrence shall result in no more than one citation for each statute or regulation violated.

(c) No citation shall be issued for a violation that has been reported by the licensee to the state department, or its designee, as an "unusual occurrence," if all of the following conditions are met:

(1) The violation has not caused harm to any patient, resident, or guest, or significantly contributed thereto.

(2) The licensee has promptly taken reasonable measures to correct the violation and to prevent a recurrence.

(3) The unusual occurrence report was the first source of information reported to the state department, or its designee, regarding the violation.

SEC. 3. Section 1424 of the Health and Safety Code is amended to read:

1424. Citations issued pursuant to this chapter shall be classified according to the nature of the violation and shall indicate the classification on the face thereof.

(a) In determining the amount of the civil penalty, all relevant facts shall be considered, including, but not limited to, the following:

(1) The probability and severity of the risk that the violation presents to the patient's or resident's mental and physical condition.

(2) The patient's or resident's medical condition.

(3) The patient's or resident's mental condition and his or her history of mental disability or disorder.

(4) The good faith efforts exercised by the facility to prevent the violation from occurring.

(5) The licensee's history of compliance with regulations.

(b) Relevant facts considered by the department in determining the amount of the civil penalty shall be documented by the department on an attachment to the citation and available in the public record. This requirement shall not preclude the department or a facility from introducing facts not listed on the citation to support or challenge the amount of the civil penalty in any proceeding set forth in Section 1428.

(c) Class "AA" violations are violations that meet the criteria for a class "A" violation and that the state department determines to have been a direct proximate cause of death of a patient or resident of a long-term health care facility. A class "AA" citation is subject to a civil penalty in the amount of not less than five thousand dollars ($5,000) and not exceeding twenty-five thousand dollars ($25,000) for each citation. In any action to enforce a citation issued under this subdivision, the state department shall prove all of the following:

(1) The violation was a direct proximate cause of death of a patient or resident.

(2) The death resulted from an occurrence of a nature that the regulation was designed to prevent.

(3) The patient or resident suffering the death was among the class of persons for whose protection the regulation was adopted.

If the state department meets this burden of proof, the licensee shall have the burden of proving that the licensee did what might reasonably be expected of a long-term health care facility licensee, acting under similar circumstances, to comply with the regulation. If the licensee sustains this burden, then the citation shall be dismissed.

For each class "AA" citation within a 12-month period that has become final, the state department shall consider the suspension or revocation of the facility's license in accordance with Section 1294. For a third or subsequent class "AA" citation in a facility within that 12-month period that has been sustained following a citation review conference, the state department shall commence action to suspend or revoke the facility's license in accordance with Section 1294.

(d) Class "A" violations are violations which the state department determines present either (1) imminent danger that death or serious harm to the patients or residents of the long-term health care facility would result therefrom, or (2) substantial probability that death or serious physical harm to patients or residents of the long-term health care facility would result therefrom. A physical condition or one or more practices, means, methods, or operations in use in a long-term health care facility may constitute a class "A" violation. The condition or practice constituting a class "A" violation shall be abated or eliminated immediately, unless a fixed period of time, as determined by the state department, is required for correction. A class "A" citation is subject to a civil penalty in an amount not less than one thousand dollars ($1,000) and not exceeding ten thousand dollars ($10,000) for each and every citation.

If the state department establishes that a violation occurred, the licensee shall have the burden of proving that the licensee did what might reasonably be expected of a long-term health care facility licensee, acting under similar circumstances, to comply with the regulation. If the licensee sustains this burden, then the citation shall be dismissed.

(e) Class "B" violations are violations that the state department determines have a direct or immediate relationship to the health, safety, or security of long-term health care facility patients or residents, other than class "AA" or "A" violations. Unless otherwise determined by the state department to be a class "A" violation pursuant to this chapter and rules and regulations adopted pursuant thereto, any violation of a patient's rights as set forth in Sections 72527 and 73523 of Title 22 of the California Administrative Code, that is determined by the state department to cause or under circumstances likely to cause significant humiliation, indignity, anxiety, or other emotional trauma to a patient is a class "B" violation. A class "B" citation is subject to a civil penalty in an amount not less than one hundred dollars ($100) and not exceeding one thousand dollars ($1,000) for each and every citation. A class "B" citation shall specify the time within which the violation is required to be corrected. If the state department establishes that a violation occurred, the licensee shall have the burden of proving that the licensee did what might reasonably be expected of a long-term health care facility licensee, acting under similar circumstances, to comply with the regulation. If the licensee sustains this burden, then the citation shall be dismissed.

In the event of any citation under this paragraph, if the state department establishes that a violation occurred, the licensee shall have the burden of proving that the licensee did what might reasonably be expected of a long-term health care facility licensee, acting under similar circumstances, to comply with the regulation. If the licensee sustains this burden, then the citation shall be dismissed.

(f) (1) Any willful material falsification or willful material omission in the health record of a patient of a long-term health care facility is a violation.

(2) "Willful material falsification," as used in this section, means any entry in the patient health care record pertaining to the administration of medication, or treatments ordered for the patient, or pertaining to services for the prevention or treatment of decubitus ulcers or contractures, or pertaining to tests and measurements of vital signs, or notations of input and output of fluids, that was made with the knowledge that the records falsely reflect the condition of the resident or the care or services provided.

(3) "Willful material omission," as used in this section, means the willful failure to record any untoward event that has affected the health, safety, or security of the specific patient, and that was omitted with the knowledge that the records falsely reflect the condition of the resident or the care or services provided.

(g) A violation of subdivision (e) may result in a civil penalty not to exceed ten thousand dollars ($10,000), as specified in paragraphs (1) to (3), inclusive.

(1) The willful material falsification or willful material omission is subject to a civil penalty of not less than two thousand five hundred dollars ($2,500) or more than ten thousand dollars ($10,000) in instances where the health care record is relied upon by a health care professional to the detriment of a patient by affecting the administration of medications or treatments, the issuance of orders, or the development of plans of care. In all other cases, violations of this subdivision are subject to a civil penalty not exceeding two thousand five hundred dollars ($2,500).

(2) Where the penalty assessed is one thousand dollars ($1,000) or less, the violation shall be issued and enforced, except as provided in this subdivision, in the same manner as a class "B" violation, and shall include the right of appeal as specified in Section 1428. Where the assessed penalty is in excess of one thousand dollars ($1,000), the violation shall be issued and enforced, except as provided in this subdivision, in the same manner as a class "A" violation, and shall include the right of appeal as specified in Section 1428.

Nothing in this section shall be construed as a change in previous law enacted by Chapter 11 of the Statutes of 1985 relative to this paragraph, but merely as a clarification of existing law.

(3) Nothing in this subdivision shall preclude the state department from issuing a class "A" or class "B" citation for any violation that meets the requirements for that citation, regardless of whether the violation also constitutes a violation of this subdivision. However, no single act, omission, or occurrence may be cited both as a class "A" or class "B" violation and as a violation of this subdivision.

(h) The director shall prescribe procedures for the issuance of a notice of violation with respect to violations having only a minimal relationship to patient safety or health.

(i) Nothing in this section is intended to change existing statutory or regulatory requirements governing the ability of a licensee to contest a citation pursuant to Section 1428.

(j) The department shall ensure that district office activities performed under Sections 1419 to 1424, inclusive, are consistent with the requirements of these sections and all applicable laws and regulations. To ensure the integrity of these activities, the department shall establish a statewide process for the collection of postsurvey evaluations from affected facilities.

SEC. 4. Section 1428 of the Health and Safety Code is amended to read:

1428. (a) If the licensee desires to contest a citation or the proposed assessment of a civil penalty therefor, the licensee shall use the processes described in subdivisions (b) and (c) for classes "AA," "A," or "B" citations. As a result of a citation review conference, a citation or the proposed assessment of a civil penalty may be affirmed, modified, or dismissed by the director or the director's designee. If the director's designee affirms, modifies, or dismisses the citation or proposed assessment of a civil penalty, he or she shall state with particularity in writing his or her reasons for that action, and shall immediately transmit a copy thereof to each party to the original complaint. If the licensee desires to contest a decision made after the citation review conference, the licensee shall inform the director in writing within 15 business days after he or she receives the decision by the director's designee.

(b) If a licensee notifies the director that he or she intends to contest a class "AA" or a class "A" citation, the licensee may first, within 15 business days after service of the citation, notify the director in writing of his or her request for a citation review conference. The licensee shall inform the director in writing, within 15 business days of the service of the citation or the receipt of the decision of the director's designee after the citation review conference, of the licensee's intent to adjudicate the validity of the citation in the municipal or superior court in the county in which the long-term health care facility is located. In order to perfect a judicial appeal of a contested citation, a licensee shall file a civil action in the municipal or superior court in the county in which the long-term health care facility is located. The action shall be filed no later than 90 calendar days after a licensee notifies the director that he or she intends to contest the citation, or no later than 90 days after the receipt of the decision by the director's designee after the citation review conference, and served not later than 90 days after filing. Notwithstanding any other provision of law, a licensee prosecuting a judicial appeal shall file and serve an at-issue memorandum pursuant to Rule 209 of the California Rules of Court within six

months after the state department files its answer in the appeal. Notwithstanding subdivision (d), the court shall dismiss the appeal upon motion of the state department if the at-issue memorandum is not filed by the facility within the period specified.

(c) If a licensee desires to contest a class "B" citation, the licensee may request, within 15 business days after service of the citation, a citation review conference, by writing the director or the director's designee of the licensee's intent to appeal the citation through the citation review conference. If the licensee wishes to appeal the citation which has been upheld in a citation review conference, the licensee shall, within 15 working days from the date the citation review conference decision was rendered, notify the director or the director's designee that he or she wishes to appeal the decision through the procedures set forth in Section 100171 or elects to submit the matter to binding arbitration in accordance with subdivision (d). The administrative law judge may affirm, modify, or dismiss the citation or the proposed assessment of a civil penalty. The licensee may choose to have his or her appeal heard by the administrative law judge or submit the matter to binding arbitration without having first appealed the decision to a citation review conference by notifying the director in writing within 15 business days of the service of the citation.

(d) If a licensee is dissatisfied with the decision of the administrative law judge, the licensee may, in lieu of seeking judicial review of the decision as provided in Section 1094.5 of the Code of Civil Procedure, elect to submit the matter to binding arbitration by filing, within 60 days of its receipt of the decision, a request for arbitration with the American Arbitration Association. The parties shall agree upon an arbitrator designated from the American Arbitration Association in accordance with the association's established rules and procedures. The arbitration hearing shall be set within 45 days of the election to arbitrate, but in no event less than 28 days from the date of selection of an arbitrator. The arbitration hearing may be continued up to 15 additional days if necessary at the arbitrator's discretion. Except as otherwise specifically provided in this subdivision, the arbitration hearing shall be conducted in accordance with the American Arbitration Association's established rules and procedures. The arbitrator shall determine whether the licensee violated the regulation or regulations cited by the department, and whether the citation meets the criteria established in Sections 1423 and 1424. If the arbitrator determines that the licensee has violated the regulation or regulations cited by the department, and that the class of the citation should be upheld, the proposed assessment of a civil penalty shall be affirmed, subject to the limitations established in Section 1424. The licensee and the department shall each bear its respective portion of the cost of arbitration. A resident, or his or her designated representative, or both, entitled to participate in the citation review conference

pursuant to subdivision (f), may make an oral or written statement regarding the citation, at any arbitration hearing to which the matter has been submitted after the citation review conference.

(e) If an appeal is prosecuted under this section, including an appeal taken in accordance with Section 100171, the state department shall have the burden of establishing by a preponderance of the evidence that (1) the alleged violation did occur, (2) the alleged violation met the criteria for the class of citation alleged, and (3) the assessed penalty was appropriate. The state department shall also have the burden of establishing by a preponderance of the evidence that the assessment of a civil penalty should be upheld. If a licensee fails to notify the director in writing that he or she intends to contest the citation, or the proposed assessment of a civil penalty therefor, or the decision made by the director's designee, after a citation review conference, within the time specified in this section, the decision by the director's designee after a citation review conference shall be deemed a final order of the state department and shall not be subject to further administrative review, except that the licensee may seek judicial relief from the time limits specified in this section. If a licensee appeals a contested citation or the assessment of a civil penalty, no civil penalty shall be due and payable unless and until the appeal is terminated in favor of the state department.

(f) The director or the director's designee shall establish an independent unit of trained citation review conference hearing officers within the state department to conduct citation review conferences. Citation review conference hearing officers shall be directly responsible to the deputy director for licensing and certification, and shall not be concurrently employed as supervisors, district administrators, or regional administrators with the licensing and certification division. Specific training shall be provided to members of this unit on conducting an informal conference, with emphasis on the regulatory and legal aspects of long-term health care.

Where the state department issues a citation as a result of a complaint or regular inspection visit, and a resident or residents are specifically identified in a citation by name as being specifically affected by the violation, then the following persons may attend the citation review conference:

(1) The complainant and his or her designated representative.

(2) A personal health care provider, designated by the resident.

(3) A personal attorney.

(4) Any person representing the Office of the State Long-Term Care Ombudsman, as defined in subdivision (c) of Section 9701 of the Welfare and Institutions Code.

Where the state department determines that residents in the facility were threatened by the cited violation but does not name specific residents, any person representing the Office of the State

Long-Term Care Ombudsman, as defined in subdivision (c) of Section 9701 of the Welfare and Institutions Code, and a representative of the residents or family council at the facility may participate to represent all residents. In this case, these representatives shall be the sole participants for the residents in the conference. The residents or family council shall designate which representative will participate.

The complainant, affected resident, and their designated representatives shall be notified by the state department of the conference and their right to participate. The director's designee shall notify the complainant or his or her designated representative and the affected resident or his or her designated representative, of his or her determination based on the citation review conference.

(g) In assessing the civil penalty for a violation, all relevant facts shall be considered, including, but not limited to, all of the following:

(1) The probability and severity of the risk which the violation presents to the patient's or resident's mental and physical condition.

(2) The patient's or resident's medical condition.

(3) The patient's or resident's mental condition and his or her history of mental disability.

(4) The good faith efforts exercised by the facility to prevent the violation from occurring.

(5) The licensee's history of compliance with regulations.

(h) Except as otherwise provided in this subdivision, an assessment of civil penalties for a class "A" or class "B" violation shall be trebled and collected for a second and subsequent violation for which a citation of the same class was issued within any 12-month period. Trebling shall occur only if the first citation issued within the 12-month period was issued in the same class, a civil penalty was assessed, and a plan of correction was submitted for the previous same-class violation occurring within the period, without regard to whether the action to enforce the previous citation has become final. However, the increment to the civil penalty required by this subdivision shall not be due and payable unless and until the previous action has terminated in favor of the state department.

If the class "B" citation is issued for a patient's rights violation, as defined in subdivision (c) of Section 1424, it shall not be trebled unless the state department determines the violation has a direct or immediate relationship to the health, safety, security, or welfare of long-term health care facility residents.

(i) The director shall prescribe procedures for the issuance of a notice of violation with respect to violations having only a minimal relationship to safety or health.

(j) Actions brought under this chapter shall be set for trial at the earliest possible date and shall take precedence on the court calendar over all other cases except matters to which equal or superior precedence is specifically granted by law. Times for responsive pleading and for hearing the proceeding shall be set by the judge of

the court with the object of securing a decision as to subject matters at the earliest possible time.

(k) If the citation is dismissed, the state department shall take action immediately to ensure that the public records reflect in a prominent manner that the citation was dismissed.

(*l*) Penalties paid on violations under this chapter shall be applied against the state department's accounts to offset any costs incurred by the state pursuant to this chapter. Any costs or penalties assessed pursuant to this chapter shall be paid within 30 days of the date the decision becomes final. If a facility does not comply with this requirement, the state department shall withhold any payment under the Medi-Cal program until the debt is satisfied. No payment shall be withheld if the state department determines that it would cause undue hardship to the facility or to patients or residents of the facility.

(m) The amendments made to subdivisions (a) and (c) of this section by Chapter 84 of the Statutes of 1988, to extend the number of days allowed for the provision of notification to the director, do not affect the right, that is also contained in those amendments, to request judicial relief from these time limits.

SEC. 5. Section 1428.1 of the Health and Safety Code is amended to read:

1428.1. A licensee may, in lieu of contesting a citation pursuant to Section 1428, transmit to the state department the minimum amount specified by law, or 65 percent of the amount specified in the citation, whichever is greater, for each violation within 15 business days after the issuance of the citation.

CHAPTER 651

An act to amend Section 8646 of, and to add and repeal Section 8674.5 of, the Business and Professions Code, and to amend Sections 12996, 12998, 12999, 12999.4, 12999.5, and 15205 of, to add Section 12999.2 to, and to add Chapter 7.5 (commencing with Section 15300) to Division 7 of, the Food and Agricultural Code, relating to structural pest control, and making an appropriation therefor.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. (a) The Legislature hereby finds and declares all of the following:

(1) California consumers are increasingly interested in nonchemical pest control, especially in and around the home.

(2) Pesticides must be evaluated and registered by the state prior to their sale and use.

(3) For the protection of consumers, applicators, and both the home and ambient environment, structural pest control devices also need to be evaluated and registered by the state prior to their sale and use.

(b) It is the intent of the Legislature, in establishing regulatory requirements for the use of structural pest control devices, to minimize the potential for misrepresentation, inadequate pest control, and hazards while encouraging the development of pest control techniques that are alternatives to pesticides.

SEC. 2. Section 8646 of the Business and Professions Code is amended to read:

8646. Disregard and violation of pesticide use and application, structural pest control device, fumigation, or extermination laws of the state or of any of its political subdivisions, or regulations adopted pursuant to those laws, is a ground for disciplinary action.

SEC. 3. Section 8674.5 is added to the Business and Professions Code, to read:

8674.5. (a) There is hereby created in the State Treasury a special fund known as the Structural Pest Control Device Fund. Each person who pays a license fee pursuant to this chapter, in addition, shall pay a fee of twenty-five cents ($0.25) for each "Inspection Report" stamp and "Notice of Work Completed" stamp purchased from the board. Funds derived from the additional twenty-five cents ($0.25) shall be deposited in the Structural Pest Control Device Fund.

(b) Five percent of the amount collected and deposited in the Structural Pest Control Device Fund shall be available to the board for administrative costs upon appropriation in the annual Budget Act. The balance in the fund is hereby continuously appropriated to the Department of Pesticide Regulation for costs incurred by that department pursuant to Chapter 7.5 (commencing with Section 15300) of Division 7 of the Food and Agricultural Code.

(c) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2002, deletes or extends that date.

SEC. 4. Section 12996 of the Food and Agricultural Code is amended to read:

12996. (a) Every person who violates any provision of this division relating to pesticides, or any regulation issued pursuant to a provision of this division relating to pesticides, is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000), or by imprisonment of not more than six months, or by both fine and imprisonment. Upon a second or subsequent conviction of the same provision of this division relating to pesticides, a person shall be punished by a fine of not less than one thousand

dollars ($1,000) nor more than ten thousand dollars ($10,000), or by imprisonment of not more than six months or by both fine and imprisonment. Each violation constitutes a separate offense.

(b) Notwithstanding the penalties prescribed in subdivision (a), if the offense involves an intentional or negligent violation that created or reasonably could have created a hazard to human health or the environment, the convicted person shall be punished by imprisonment in the county jail not exceeding one year or in the state prison or by fine of not less than five thousand dollars ($5,000) nor more than fifty thousand dollars ($50,000), or by both the fine and imprisonment.

(c) This section does not apply to violations of Chapter 7.5 (commencing with Section 15300).

SEC. 5. Section 12998 of the Food and Agricultural Code is amended to read:

12998. Any person who violates this division relating to pesticides or structural pest control devices, or any regulation issued pursuant to a provision of this division relating to pesticides or structural pest control devices, is liable civilly in an amount not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000) for each violation. Any person who commits a second or subsequent violation that is the same as a prior violation or similar to a prior violation or whose intentional violation resulted or reasonably could have resulted in the creation of a hazard to human health or the environment or in the disruption of the market of the crop or commodity involved, is liable civilly in an amount not less than five thousand dollars ($5,000) nor more than twenty-five thousand dollars ($25,000) for each violation. Any money recovered under this section shall be paid into the Department of Pesticide Regulation Fund for use by the department in administering this division, and Division 6 (commencing with Section 11401).

SEC. 6. Section 12999 of the Food and Agricultural Code is amended to read:

12999. Upon a complaint by the director, or by the Structural Pest Control Board in the case of violations of Chapter 7.5 (commencing with Section 15300) or regulations adopted pursuant to that chapter relating to structural pest control devices, the Attorney General may bring an action for civil penalties in any court of competent jurisdiction in this state against any person violating any provision of this division, or any regulation issued pursuant to it. The Attorney General may bring an action for civil penalties on his or her own initiative if, after examining the complaint and the evidence, he or she believes a violation has occurred.

SEC. 7. Section 12999.2 is added to the Food and Agricultural Code, to read:

12999.2. The remedies or penalties provided by this division are in addition to the remedies or penalties available under any other law.

SEC. 8. 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, Article 4.5 (commencing with Section 12841), Chapter 7.5 (commencing with Section 15300), or the regulations adopted pursuant to those provisions, 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 be given a written notice of the proposed action, including the nature of the violation and the amount of the proposed penalty, and shall have the right to request a hearing within 20 days after receiving notice of the proposed action. A notice of the proposed action that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or the notice is not accepted at that address. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. At the hearing, the person shall be given an opportunity to review the director's evidence and to present evidence on his or her own behalf. If a hearing is not timely requested, the director may take the action proposed without a hearing.

(c) If the person against whom the director levied a civil penalty requested and appeared at a hearing, the person may seek review of the director's decision 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. 9. Section 12999.5 of the Food and Agricultural Code is amended to read:

12999.5. (a) In lieu of civil prosecution by the director, the commissioner may levy a civil penalty against a person violating Division 6 (commencing with Section 11401), Article 10 (commencing with Section 12971) or Article 10.5 (commencing with Section 12980) of this chapter, Section 12995, Article 1 (commencing

with Section 14001) of Chapter 3, Chapter 7.5 (commencing with Section 15300), or a regulation adopted pursuant to any of these provisions, of not more than one thousand dollars ($1,000) for each violation.

(b) Before a civil penalty is levied, the person charged with the violation shall be given a written notice of the proposed action including the nature of the violation and the amount of the proposed penalty, and shall have the right to request a hearing within 20 days after receiving notice of the proposed action. A notice of the proposed action that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or the notice is not accepted at that address. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. At the hearing, the person shall be given an opportunity to review the commissioner's evidence and to present evidence on his or her own behalf. If a hearing is not timely requested, the commissioner may take the action proposed without a hearing.

(c) If the person upon whom the commissioner levied a civil penalty requested and appeared at a hearing, the person may appeal the commissioner's decision to the director within 30 days of the date of receiving a copy of the commissioner's decision. The following procedures apply to the appeal:

(1) The appeal shall be in writing and signed by the appellant or his or her authorized agent, state the grounds for the appeal, and include a copy of the commissioner's decision. The appellant shall file a copy of the appeal with the commissioner at the same time it is filed with the director.

(2) The appellant and the commissioner may, at the time of filing the appeal or within 10 days thereafter or at a later time prescribed by the director, present the record of the hearing including written evidence that was submitted at the hearing and a written argument to the director stating grounds for affirming, modifying, or reversing the commissioner's decision.

(3) The director may grant oral arguments upon application made at the time written arguments are filed.

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days before the date set therefor. The times may be altered by mutual agreement of the appellant, the commissioner, and the director.

(5) The director shall decide the appeal on the record of the hearing, including the written evidence and the written argument described in paragraph (2), that he or she has received. If the director finds substantial evidence in the record to support the commissioner's decision, the director shall affirm the decision.

(6) The director shall render a written decision within 45 days of the date of appeal or within 15 days of the date of oral arguments or as soon thereafter as practical.

(7) On an appeal pursuant to this section, the director may affirm the commissioner's decision, modify the commissioner's decision by reducing or increasing the amount of the penalty levied so that it is within the director's guidelines for imposing civil penalties, or reverse the commissioner's decision. Any civil penalty increased by the director shall not be higher than that proposed in the commissioner's notice of proposed action given pursuant to subdivision (b). A copy of the director's decision shall be delivered or mailed to the appellant and the commissioner.

(8) Any person who does not request a hearing pursuant to subdivision (b) may not file an appeal pursuant to this subdivision.

(9) Review of a decision of the director may be sought by the appellant within 30 days of the date of the decision pursuant to Section 1094.5 of the Code of Civil Procedure.

(d) The commissioner may levy a civil penalty pursuant to subdivisions (a) to (c), inclusive, against a person violating paragraph (1), (2), or (8) of subdivision (a) of Section 1695 of the Labor Code, which pertains to registration with the commissioner, carrying proof of that registration, and filing changes of address with the commissioner.

(e) After the exhaustion of the appeal and review procedures provided in this section, the commissioner or his or her representative, may file a certified copy of a final decision of the commissioner that directs the payment of a civil penalty and, if applicable, a copy of any decision of the director or his or her authorized representative rendered on an appeal from the commissioner's decision and a copy of any order that denies a petition for a writ of administrative mandamus, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. No fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

SEC. 10. Section 15205 of the Food and Agricultural Code is amended to read:

15205. (a) Each registered structural pest control company shall make all existing records pertaining to pesticide and device use available to the director, the Structural Pest Control Board, or commissioner upon demand at the headquarters of the business during normal business hours. A registered structural pest control company or licensee may not prohibit onsite inspection for compliance with the Business and Professions Code and this division regarding pesticides and structural pest control devices and regulations adopted pursuant thereto. Except as provided in Section 8505.5 of the Business and Professions Code, nothing in this section

shall be construed as requiring a registered structural pest control company or licensee to provide advance notice of the date, time, location of the application, type of device or pesticide application, or any other related information unless the information is contained in existing records available to the registered company or licensee, in which case the director, the Structural Pest Control Board, or commissioner may require that this information be produced at the company's place of business.

(b) Information and documents gathered by the director, the Structural Pest Control Board, or the commissioner pursuant to this section that are protected from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) shall remain confidential while in the director's, the board's, or the commissioner's possession.

(c) (1) "Device," for purposes of this section, means any method, instrument, or contrivance intended to be used to prevent, eliminate, destroy, repel, attract, or mitigate any wood destroying pest, but does not include firearms, pesticides as defined in Section 12753, or equipment used for the application of pesticides when sold separately from a pesticide.

(2) "Wood destroying pest," for purposes of this section, includes, but is not limited to, insects such as wood borers and termites. "Wood destroying pest" does not include wood-decaying fungi, general household pests such as cockroaches, or vertebrate pests such as rats and mice.

SEC. 11. Chapter 7.5 (commencing with Section 15300) is added to Division 7 of the Food and Agricultural Code, to read:

CHAPTER 7.5. STRUCTURAL PEST CONTROL DEVICES

Article 1. Definitions

15300. For the purposes of this chapter, the following definitions apply:

(a) "Structural pest control device" or "device" means any method, instrument, or contrivance intended to be used to prevent, eliminate, destroy, repel, attract, or mitigate any wood destroying pest, but does not include firearms, pesticides as defined in Section 12753, or equipment used for the application of pesticides when sold separately from a pesticide.

(b) "Wood destroying pest" includes, but is not limited to, insects such as wood borers and termites. "Wood destroying pest" does not include wood-decaying fungi, general household pests such as cockroaches, or vertebrate pests such as rats and mice.

Article 2. General Provisions

15301. (a) On and after July 1, 2001, it is unlawful for any person directly, or through another, to manufacture for sale, advertise, deliver or otherwise provide, offer for sale or lease, sell, lease, possess, or use any device in this state that is not registered pursuant to this chapter, or for which the registration has been suspended or canceled, except as provided in subdivision (b), any other provision of this chapter, regulations adopted by the director, or a notice or order of suspension or cancellation of a device.

(b) For devices in use in California prior to January 1, 2001, the director may grant reasonable extensions of time for the submission or review, or both the submission and review, of data in support of an application for registration. Before the director may grant an extension of time, the applicant shall have made a good faith effort to comply with the requirements of this chapter and shall demonstrate to the satisfaction of the director that circumstances beyond the applicant's control were the primary cause of the delay.

(c) This section does not apply to any device manufactured solely for export outside this state and which is so exported.

15302. The director shall regulate structural pest control devices.

15303. The director may adopt, amend, repeal, and enforce regulations relating to the regulation of devices and the administration of this chapter. When adopting regulations pursuant to this chapter, the director shall consider the safe use of devices and safe working conditions for persons handling, storing, or using devices or working in and about device treated areas.

Article 3. Device Registration

15305. (a) The director shall endeavor to prevent and eliminate from use in this state any device that meets any of the following criteria:

(1) The device endangers human health or safety, property, or the environment.

(2) The device is not beneficial or efficacious for the purposes for which it is manufactured for sale, advertised, delivered or otherwise provided, offered for sale or lease, sold, leased, possessed, or used.

(3) Is misrepresented.

(b) The director may establish specific criteria to evaluate a device. The director may establish performance standards and tests of structural pest control devices, which are to be conducted by the applicant for registration, registrant, or parties interested in the registration of the device.

(c) Before a device is registered, the director shall conduct, or cause to be conducted, a thorough and timely evaluation of the device. The director may impose reporting requirements and restrictions upon the use of a device, including, but not limited to,

limitations on area and manner of application. The director may reevaluate any registered device.

15306. The director shall not determine a device to be beneficial or efficacious if any of the following exists:

(a) The ability of the device to control pests falls below the standard or quality that the device is represented to have, or the device is of little or no value for the purpose for which it is intended.

(b) Any component or subsystem that is necessary to the effectiveness of the device has been wholly or partially omitted in its manufacture, or other materials have been substituted for that component or subsystem.

15307. Every manufacturer of, importer of, vender of, or dealer in, any device, except a dealer or agent that sells a registered device, shall obtain a certificate of device registration from the director before the device is manufactured for sale, advertised, delivered or otherwise provided, offered for sale or lease, sold, leased, possessed, or used, in this state, unless the device is used under a valid device research permit pursuant to Section 15314.

15308. Each applicant for registration of a device, at a minimum, shall submit all of the following:

(a) A completed application form prescribed by the director.

(b) Proposed labeling for the device.

(c) Valid data supporting each claim on the proposed label and supporting the safety of the device for each proposed labeled use.

(d) A nonrefundable application fee in the amount of two hundred dollars ($200). The application fees shall be deposited in the Department of Pesticide Regulation Fund and shall be available, upon appropriation, for use by the department in administering this division.

(e) Any other information required by regulation of the director.

15309. Within a timely manner after receipt of the information and fee specified in Section 15308, the director shall do one or more of the following:

(a) Issue a certificate of device registration pursuant to Section 15310.

(b) Notify the applicant that the submission is inadequate and specify the additional data that must be submitted and reviewed before a registration decision is rendered. In issuing a notification pursuant to this subdivision, the director may specify a reasonable timeframe for the submission of the additional data, moneys, labeling, or information to avoid a requirement for submission of a new application and application fee.

(c) Notify the applicant of the director's decision to deny registration.

15310. If an applicant for registration of a device complies with this chapter and the regulations that are adopted pursuant to this chapter, the director shall register the device and issue a certificate

of device registration to the applicant authorizing the manufacture and sale of the device in this state.

15311. If the director finds that registration must be denied due to noncompliance with this chapter or the regulations that are adopted pursuant to this chapter, the director shall deny registration. Upon the request of the applicant, the director may hold a hearing to reconsider the director's decision to deny the application.

15312. Each applicant for a certificate of device registration shall inform the director of every brand and trademark of a device that the applicant intends to manufacture for sale, advertise, deliver or otherwise provide, offer for sale or lease, sell, lease, possess, or use. The director may require an applicant to identify each component in the device.

15313. The registrant of a device shall immediately notify the director of any proposed change to the device including, but not limited to, labeling composition, configuration method of application, and use of the device. The director shall determine whether the changes require the director's approval before the changed device may be manufactured for sale, advertised, delivered or otherwise provided, offered for sale or lease, sold, leased, possessed, or used in this state. The director shall notify the registrant of this determination.

15314. The director may issue a device research permit for the scientific evaluation of new devices for a limited period of time determined by the director.

15315. (a) Pursuant to Sections 15305 and 15306, after providing notice to the device registrant or applicant of an opportunity to be heard, the director may cancel the registration of, or refuse to register, any device that meets any of the following criteria:

(1) The director determines that the device has demonstrated serious uncontrollable adverse effects on human health or safety, property, or the environment.

(2) The director determines that the use of the device is of less public value or greater detriment to the environment than the benefit received by its use.

(3) The director determines that a false or misleading statement is made or implied by the registrant or his or her agent, or the applicant for registration, either verbally or in writing, or in the form of any advertising literature concerning the device.

(4) The director determines that the registrant, or his or her agent, or applicant for registration has failed to report any adverse effect or risk as required by Section 15316.

(5) The director determines that the registrant has failed to comply with the requirements of a reevaluation of the registrant's device.

(6) The director determines that false information relating to the testing of the device, including the nature of any protocol, procedure,

substance, organism, or equipment used, observation made, or conclusion or opinion formed, was submitted to the director.

(b) When taking action or making a determination pursuant to this section, the director may require practical demonstrations and scientific testing that the director finds are necessary to determine the facts. The demonstrations or testing shall be conducted by the applicant for registration, registrant, or parties interested in the device registration.

15316. If, during the registration process, or at any time after the registration of a device, the applicant or registrant has factual or scientific information showing any adverse effect or risk of the device to human health or safety, property, or the environment that has not been previously submitted to the director, the applicant for registration or the registrant, as the case may be, shall immediately submit the information to the director.

15317. If the director has reason to believe that any of the conditions stated in Section 15315 are applicable to any registered device and that the use or continued use of the device constitutes an immediate substantial danger to human health or safety, property, or the environment, the director, after notice to the registrant, may suspend the registration of that device pending a hearing and final decision. If the director does not file an accusation pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code within 30 days from the date of the suspension, the suspension shall be terminated.

15318. The director may cancel a certificate of device registration, or refuse to issue a certificate of device registration to any manufacturer, importer, or dealer in any device that repeatedly violates this chapter or the regulations of the director.

15319. Action by the director pursuant to Section 15305, 15311, 15315, 15317, or 15318 is not a condition precedent to the institution of any action to prosecute or levy a civil penalty for a violation of this chapter or regulations adopted pursuant to this chapter.

15320. (a) A registrant at any time may request that the registration of any of its devices be voluntarily canceled. The request shall be in writing to the director and shall include a waiver of the registrant's right to a hearing on the cancellation.

(b) The director shall mail a notice of voluntary cancellation of registration of the device to the registrant. The notice shall specify the effective date of the cancellation.

Article 4. Labeling and Warranty

15325. The registrant of a device shall furnish printed directions for use on the label or shall enclose the printed directions with the device. The device label shall state the name, brand, or trademark, if any, under which the device will be sold and the name and address of the device manufacturer, importer, dealer, or vendor.

15326. (a) The registrant of a device may print limitations of warranty on the label with respect to the use of the device, as the registrant considers proper.

(b) Notwithstanding subdivision (a), no limitations of warranty by the device manufacturer, registrant, user, seller, lessor, or licensor shall exclude or waive either of the following implied warranties:

(1) That the device corresponds to all claims and descriptions that the registrant has made in print regarding the device.

(2) That the device is reasonably fit for use for any purpose for which it is intended according to any printed statement of the registrant.

15327. Except as otherwise provided in this chapter, the registrant is not liable for any injury or damage that is suffered solely by reason of any of the following:

(a) The use of the device for a purpose different from that represented by the label.

(b) The use of the device contrary to the printed directions of the registrant.

Article 5. Seizure

15330. (a) If any device is determined to be manufactured for sale, advertised, delivered or otherwise provided, offered for sale or lease, sold, leased, possessed, or used in violation of any of the provisions of this chapter or any regulations adopted pursuant to this chapter, or if the device has been, or is intended to be, manufactured for sale, advertised, delivered or otherwise provided, offered for sale or lease, sold, leased, possessed, or used in violation of those provisions, or when the registration of the device has been canceled by a final order or has been suspended, the director may issue a written "cease and desist" order to any person who owns, controls, or has custody of the device. After receipt of the cease and desist order, the receiver of the order shall not manufacture for sale, advertise, deliver or otherwise provide, offer for sale or lease, sell, lease, possess, or use the device described in the order except in accordance with the provisions of the order.

(b) The director may seize or quarantine any device that meets any of the following criteria:

(1) The device is not registered pursuant to this chapter or any of the regulations adopted pursuant to this chapter.

(2) Any of the claims made for the device or any of the directions for its use differs in substance from the representation made in connection with its registration.

(3) The device is misbranded or mislabeled.

(4) When used in accordance with the requirements imposed under this chapter and as directed by the labeling or printed directions, the device nevertheless causes unreasonable adverse

effects on human health, human safety, human welfare, property, or the environment.

(5) The device is manufactured for sale, advertised, delivered or otherwise provided, offered for sale or lease, sold, leased, possessed, or used in violation of a cease and desist order.

(6) The device is otherwise not in conformity with this chapter or the regulations adopted pursuant to it.

(c) After a device is seized or quarantined, the department shall provide the person from whom the device was seized or quarantined an opportunity for a hearing.

(1) If the director determines, after a hearing is held if requested, that the device can be brought into compliance with the requirements of this chapter and the regulations adopted pursuant to this chapter, the director shall hold the device or continue the quarantine until the requirements of this chapter and the regulations adopted pursuant to this chapter have been complied with, at which time the device shall be released to the person from whom it was seized or the quarantine shall be lifted, as the case may be.

(2) If the director determines, after a hearing is held if requested, that the device cannot be brought into compliance with the requirements of this chapter and the regulations adopted pursuant to this chapter, the director shall order the owner of the device to dispose of it in a manner prescribed by the director to protect human health, human safety, and human welfare and to accomplish the purposes of this chapter.

Article 6. Device Usage

15331. The use of any device shall not conflict with the label on the device as registered pursuant to this chapter.

Article 7. Violations

15340. (a) Except as provided by subdivision (c), it is unlawful for any person directly, indirectly, or through another, to manufacture for sale, advertise, deliver or otherwise provide, offer for sale or lease, sell, lease, possess, or use any of the following:

(1) Any device that is not registered pursuant to this chapter, or whose registration has been canceled or suspended, except to the extent that the sale, lease, or other provision has been authorized by the director.

(2) Any registered device if any claim made for it as a part of its distribution or sale substantially differs from any claim made for it as a part of the information required in connection with its registration.

(3) Any registered device the configuration of which differs at the time of its sale, lease or other provision, or use from its configuration as described in the information required in connection with its registration.

(4) Any device that is misbranded or mislabeled.

(b) It is unlawful for any person directly, indirectly, or through another, to do any of the following:

(1) Violate any provision of this chapter and any rules or regulations adopted by the director pursuant to this chapter.

(2) Manufacture for sale, advertise, deliver or otherwise provide, offer for sale or lease, sell, lease, possess, or use any device, except in compliance with this chapter and regulations adopted pursuant to this chapter.

(3) Detach, alter, deface, or destroy, in whole or in part, any device labeling.

(4) Refuse to prepare, maintain, or submit any records or reports required by the director under this chapter or regulations adopted pursuant to this chapter for a registered device.

(5) Use any registered device in a manner inconsistent with its registration and labeling.

(6) Use any device that is under a valid device research permit contrary to the provisions of that permit.

(7) Violate any order issued pursuant to this chapter.

(8) Knowingly falsify all or part of any application for registration, application for a device research permit, any information submitted to the director pursuant to this chapter, any records required to be maintained pursuant to this chapter, or any report filed under this chapter.

(9) Falsify all or part of any information relating to the testing of any device, including the nature of any protocol, procedure, substance, organism, or equipment used, observation made, or conclusion or opinion formed, submitted to the director, or that the person knows will be furnished to the director or will become a part of any records required to be maintained by this chapter or regulations adopted pursuant to this chapter.

(10) Submit to the director data known to be false in support of a registration.

(c) It is not a violation of subdivision (a) for any person to manufacture for sale, transport, or use any device pursuant to a valid research permit in effect with respect to that device and that use or possession.

SEC. 12. The Director of Pesticide Regulation may establish an ad hoc committee to advise the department regarding the structural pest control device registration program established pursuant to Chapter 7.5 (commencing with Section 15300) of Division 7 of the Food and Agricultural Code.

SEC. 13. 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 add Section 1256.2 to the Health and Safety Code, and to add Section 14132.42 to the Welfare and Institutions Code, relating to health.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. The Legislature finds and declares that it is unethical for a health care provider to deny pain management assistance, or to threaten to withhold treatment, based upon a patient's source of payment, or ability to pay for medical services.

SEC. 2. Section 1256.2 is added to the Health and Safety Code, to read:

1256.2. (a) (1) No general acute care hospital may promulgate policies or implement practices that determine differing standards of obstetrical care based upon a patient's source of payment or ability to pay for medical services.

(2) Each hospital holding an obstetrical services permit shall provide the licensing and certification division of the department with a written policy statement reflecting paragraph (1) and shall post written notices of this policy in the obstetrical admitting areas of the hospital by July 1, 1999. Notices posted pursuant to this section shall be posted in the predominant language or languages spoken in the hospital's service area.

(b) It shall constitute unprofessional conduct within the meaning of the Medical Practice Act, Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, for a physician or surgeon to deny, or threaten to withhold pain management services from a woman in active labor, based upon that patient's source of payment, or ability to pay for medical services.

SEC. 3. It is the intent of the Legislature in enacting Section 3 of this act that the protections under the Newborns' and Mothers' Health Act of 1997 (Chapter 389 of the Statutes of 1997), which added Section 1367.62 to the Health and Safety Code and Section 10123.87 to the Insurance Code, shall apply equally to all pregnant women eligible for benefits under Medi-Cal.

SEC. 4. Section 14132.42 is added to the Welfare and Institutions Code, to read:

14132.42. Benefits under this chapter shall not be restricted for inpatient hospital care to a time period less than 48 hours following a normal vaginal delivery and less than 96 hours following delivery by caesarean section. However, coverage for inpatient hospital care may be for a time period less than 48 or 96 hours following a delivery if both of the following conditions are met:

(a) The decision to discharge the mother and newborn before the 48- or 96-hour time period is made by the treating physicians in consultation with the mother.

(b) A postdischarge followup visit for the mother and newborn within 48 hours of discharge, when prescribed by the treating physician, is also a covered benefit under this chapter. The visit shall be by a licensed health care provider whose scope of practice includes postpartum care and newborn care. The visit shall include, at a minimum, parent education, assistance and training in breast or bottle feeding, and the performance of any necessary maternal or neonatal physical assessments. The treating physician shall disclose to the mother the availability of a postdischarge visit, including an in-home visit, physician office visit, or plan facility visit. The treating physician, in consultation with the mother, shall determine whether the postdischarge visit shall occur at home, the plan's facility, or the treating physician's office after assessment of certain factors. These factors shall include, but not be limited to, the transportation needs of the family and environmental and social risks.

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.

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 amend Section 21655.6 of the Vehicle Code, relating to highways.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 21655.6 of the Vehicle Code is amended to read:

21655.6. (a) Whenever the Department of Transportation authorizes or permits exclusive or preferential use of highway lanes for high-occupancy vehicles on any highway located within the territory of a transportation planning agency, as defined in Section 99214 of the Public Utilities Code, or a county transportation commission, the department shall obtain the approval of the transportation planning agency or county transportation commission prior to establishing the exclusive or preferential use of the highway lanes.

(b) If the department authorizes or permits additional exclusive or preferential use of highway lanes for high-occupancy vehicles on that portion of State Highway Route 101 located within the boundaries of the City of Los Angeles, the department shall obtain the approval of the Los Angeles County Transportation Commission by at least a two-thirds majority vote of the entire membership eligible to vote prior to establishing the additional exclusion or preferential use of the highway lanes.

(c) If the department restricts or requires the restriction of the use of any lane on any federal-aid highway in the unincorporated areas of Alameda County to high-occupancy vehicles, the Metropolitan Transportation Commission shall review the use patterns of those lanes and shall determine if congestion relief is being efficiently achieved by the creation of the high-occupancy vehicle lanes. The commission shall report its findings and recommendations in its HOV Master Plan Update for the San Francisco Bay area no later than two years after those high-occupancy vehicle lanes become operational.

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.

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CHAPTER 654

An act to amend Sections 18784 and 18785 of the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 18784 of the Revenue and Taxation Code is amended to read:

18784. All money transferred to the D.A.R.E. California (Drug Abuse Resistance Education) Fund shall be disbursed annually as follows:

(a) Upon appropriation by the Legislature to the Franchise Tax Board and the Controller, for reimbursement of all costs incurred by the Franchise Tax Board and the Controller in connection with their duties under this article.

(b) Upon reimbursement of all costs specified in subdivision (a), the balance of the money in the D.A.R.E. California (Drug Abuse Resistance Education) Fund shall be disbursed by the Controller to D.A.R.E. California to assist in establishing and maintaining drug abuse resistance education programs in California schools.

SEC. 2. Section 18785 of the Revenue and Taxation Code is amended to read:

18785. (a) This article shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2004, deletes 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 1999, or the adjusted amount specified in subdivision (c) for subsequent taxable years, 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 1996, 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. 3. The sum of three hundred thirteen thousand eight hundred fifty dollars and twenty-one cents ($313,850.21) is hereby appropriated from the D.A.R.E. California (Drug Abuse Resistance Education) Fund to the Controller for allocation to D.A.R.E. California to assist in establishing and maintaining drug abuse resistance education programs in California schools.

CHAPTER 655

An act to amend Sections 8208, 8278, 8289, and 8499.5 of the Education Code, relating to child care and development services.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 8208 of the Education Code is amended to read:

8208. As used in this chapter:

(a) "Alternative payments" includes payments that are made by one child care agency to another agency or child care provider for the provision of child care and development services, and payments that are made by an agency to a parent for the parent's purchase of child care and development services.

(b) "Applicant or contracting agency" means a school district, community college district, college or university, county superintendent of schools, county, city, public agency, private nontax-exempt agency, private tax-exempt agency, or other entity that is authorized to establish, maintain, or operate services pursuant to this chapter. Private agencies and parent cooperatives, duly licensed by law, shall receive the same consideration as any other authorized entity with no loss of parental decisionmaking prerogatives as consistent with the provisions of this chapter.

(c) "Assigned reimbursement rate" is that rate established by the contract with the agency and is derived by dividing the total dollar

amount of the contract by the minimum child day of average daily enrollment level of service required.

(d) "Attendance" means the number of children present at a child care and development facility. "Attendance," for the purposes of reimbursement, includes excused absences by children because of illness, quarantine, illness or quarantine of their parent, family emergency, or to spend time with a parent or other relative as required by a court of law or that is clearly in the best interest of the child.

(e) "Capital outlay" means the amount paid for the renovation and repair of child care and development facilities to comply with state and local health and safety standards, and the amount paid for the state purchase of relocatable child care and development facilities for lease to qualifying contracting agencies.

(f) "Caregiver" means a person who provides direct care, supervision, and guidance to children in a child care and development facility.

(g) "Child care and development facility" means any residence or building or part thereof in which child care and development services are provided.

(h) "Child care and development programs" means those programs that offer a full range of services for children from infancy to 14 years of age, for any part of a day, by a public or private agency, in centers and family child care homes. These programs include, but are not limited to, all of the following:

(1) Campus child care and development.
(2) General child care and development.
(3) Intergenerational child care and development.
(4) Migrant worker child care and development.
(5) Schoolage parenting and infant development.
(6) State preschool.
(7) Resource and referral.
(8) Severely handicapped.
(9) Family day care.
(10) Alternative payment.
(11) Child abuse protection and prevention services.
(12) Schoolage community child care.

(i) "Child care and development services" means those services designed to meet a wide variety of needs of children and their families, while their parents or guardians are working, in training, seeking employment, incapacitated, or in need of respite. These services may include direct care and supervision, instructional activities, resource and referral programs, and alternative payment arrangements.

(j) "Children at risk of abuse, neglect, or exploitation" means children who are so identified in a written referral from a legal, medical, or social service agency, or emergency shelter.

(k) "Children with exceptional needs" means children who have been determined to be eligible for special education and related services by an individualized education program team according to the special education requirements contained in Part 30 (commencing with Section 56000), and meeting eligibility criteria described in Section 56026 and Sections 56333 to 56338, inclusive, and Sections 3030 and 3031 of Title 5 of the California Code of Regulations. These children have an active individualized education program, and are receiving appropriate special education and services, unless they are under three years of age and permissive special education programs are available. These children may be developmentally disabled, hard-of-hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multihandicapped, or children with specific learning disabilities, who require the special attention of adults in a child care setting.

(*l*) "Children with special needs" includes infants and toddlers under the age of three years; limited-English-speaking-proficient children; children with exceptional needs; limited-English-proficient handicapped children; and children at risk of neglect, abuse, or exploitation.

(m) "Closedown costs" means reimbursements for all approved activities associated with the closing of operations at the end of each growing season for migrant child development programs only.

(n) "Cost" includes, but is not limited to, expenditures that are related to the operation of child care and development programs. "Cost" may include a reasonable amount for state and local contributions to employee benefits, including approved retirement programs, agency administration, and any other reasonable program operational costs. "Cost" may also include amounts for licensable facilities in the community served by the program, including lease payments or depreciation and payments of principal and interest on loans incurred to acquire, rehabilitate, or construct licensable facilities, but these costs shall not exceed fair market rents existing in the community in which the facility is located. "Reasonable and necessary costs" are costs that, in nature and amount, do not exceed what an ordinary prudent person would incur in the conduct of a competitive business.

(o) "Elementary school," as contained in Section 425 of Title 20 of the United States Code (the National Defense Education Act of 1958, Public Law 85-864, as amended), includes early childhood education programs and all child development programs, for the purpose of the cancellation provisions of loans to students in institutions of higher learning.

(p) "Health services" include, but are not limited to, all of the following:

(1) Referral, whenever possible, to appropriate health care providers able to provide continuity of medical care.

(2) Health screening and health treatment, including a full range of immunization recorded on the appropriate state immunization form to the extent provided by the Medi-Cal Act (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code) and the Child Health and Disability Prevention Program (Article 6 (commencing with Section 124025) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code), but only to the extent that ongoing care cannot be obtained utilizing community resources.

(3) Health education and training for children, parents, staff, and providers.

(4) Followup treatment through referral to appropriate health care agencies or individual health care professionals.

(q) "Higher educational institutions" means the Regents of the University of California, the Trustees of the California State University, the Board of Governors of the California Community Colleges, and the governing bodies of any accredited private nonprofit institution of postsecondary education.

(r) "Intergenerational staff" means persons of various generations.

(s) "Limited-English-speaking-proficient and non-English-speaking-proficient children" means children who are unable to benefit fully from an English-only child care and development program as a result of either of the following:

(1) Having used a language other than English when they first began to speak.

(2) Having a language other than English predominantly or exclusively spoken at home.

(t) "Parent" means any person living with a child who has responsibility for the care and welfare of the child.

(u) "Program director" means a person who, pursuant to Sections 8244 and 8360.1, is qualified to serve as a program director.

(v) "Proprietary child care agency" means an organization or facility providing child care, which is operated for profit.

(w) "Resource and referral programs" means programs that provide information to parents, including referrals and coordination of community resources for parents and public or private providers of care. Services frequently include, but are not limited to: technical assistance for providers, toy-lending libraries, equipment-lending libraries, toy- and equipment-lending libraries, staff development programs, health and nutrition education, and referrals to social services.

(x) "Severely handicapped children" are children who require instruction and training in programs serving pupils with the following profound disabilities: autism, blindness, deafness, severe orthopedic impairments, serious emotional disturbance, or severe developmental disability. These children, ages birth to 21 years, inclusive, may be assessed by public school special education staff,

regional center staff, or another appropriately licensed clinical professional.

(y) "Short-term respite child care" means child care service to assist families whose children have been identified through written referral from a legal, medical, or social service agency, or emergency shelter as being neglected, abused, exploited, or homeless, or at risk of being neglected, abused, exploited, or homeless. Child care is provided for less than 24 hours per day in child care centers, treatment centers for abusive parents, family child care homes, or in the child's own home.

(z) (1) "Site supervisor" means a person who, regardless of his or her title, has operational program responsibility for a child care and development program at a single site. A site supervisor shall hold a permit issued by the Commission on Teacher Credentialing that authorizes supervision of a child care and development program operating in a single site. The Superintendent of Public Instruction may waive the requirements of this subdivision if the superintendent determines that the existence of compelling need is appropriately documented.

(2) In respect to state preschool programs, a site supervisor may qualify under any of the provisions in this subdivision, or may qualify by holding an administrative credential or an administrative services credential. A person who meets the qualifications of a site supervisor under both Section 8244 and subdivision (e) of Section 8360.1 is also qualified under this subdivision.

(aa) "Standard reimbursement rate" means that rate established by the Superintendent of Public Instruction pursuant to Section 8265.

(bb) "Startup costs" means those expenses an agency incurs in the process of opening a new or additional facility prior to the full enrollment of children.

(cc) "State preschool services" means part-day educational programs for low-income or otherwise disadvantaged prekindergarten-age children.

(dd) "Support services" means those services which, when combined with child care and development services, help promote the healthy physical, mental, social, and emotional growth of children. Support services include, but are not limited to: protective services, parent training, provider and staff training, transportation, parent and child counseling, child development resource and referral services, and child placement counseling.

(ee) "Teacher" means a person with the appropriate permit issued by the Commission on Teacher Credentialing who provides program supervision and instruction which includes supervision of a number of aides, volunteers, and groups of children.

(ff) "Underserved area" means a county or subcounty area, including, but not limited to, school districts, census tracts, or ZIP Code areas, where the ratio of publicly subsidized child care and

development program services to the need for these services is low, as determined by the Superintendent of Public Instruction.

(gg) "Workday" means the time that the parent requires temporary care for a child for any of the following reasons:

(1) To undertake training in preparation for a job.

(2) To undertake or retain a job.

(3) To undertake other activities that are essential to maintaining or improving the social and economic function of the family, are beneficial to the community, or are required because of health problems in the family.

SEC. 2. Section 8278 of the Education Code is amended to read:

8278. (a) Notwithstanding any other provision of law, child development appropriations shall be available for expenditure for three years, except that funds remaining unencumbered at the end of the first fiscal year shall revert to the General Fund.

(b) The Superintendent of Public Instruction shall establish criteria and procedures for the reallocation of unearned contract funds in the second and third years of availability, in accordance with the following priorities:

(1) First, for the accounts payable of the State Department of Education.

(2) Second, to reimburse alternative payment programs for the provision of additional services, in accordance with Section 8222.1.

(3) Third, for one-time expenditures that will benefit children in subsidized child care, which include, but are not limited to, the purchase of materials approved by the State Department of Education for deferred and major maintenance of existing facilities, respite care, and implementation of capacity building activities, which include new facilities, training, and technical assistance. Notwithstanding any other provision of law, the allocation for these one-time expenditures may not be made unless approved in the annual Budget Act.

SEC. 3. Section 8289 of the Education Code is amended to read:

8289. (a) The State Department of Education shall disburse augmentations to the base allocation for the expansion of child care and development programs to promote equal access to child development services across the state.

(b) The Superintendent of Public Instruction shall use the formula developed pursuant to subdivision (c) and the priorities identified by local child care and development planning councils, unless those priorities do not meet the requirements of state or federal law, as a guide in disbursing augmentations pursuant to subdivision (a).

(c) The Superintendent of Public Instruction shall develop a formula for prioritizing the disbursement of augmentations pursuant to this section. The formula shall give priority to allocating funds to underserved areas. The Superintendent of Public Instruction shall develop the formula by using the definition of "underserved area" in

subdivision (ff) of Section 8208 and direct impact indicators of need for child care and development services in the county or subcounty areas. For purposes of this section, "subcounty areas" include, but are not limited to, school districts, census tracts, or ZIP Code areas that are deemed by the Superintendent of Public Instruction to be most appropriate to the type of program receiving an augmentation. Direct impact indicators of need may include, but are not limited to, the teenage pregnancy rate, the unemployment rate, area household income, or the number or percentage of families receiving public assistance, eligible for Medi-Cal, or eligible for free or reduced-price school meals, and any unique characteristics of the population served by the type of program receiving an augmentation.

(d) To promote equal access to services, the Superintendent of Public Instruction shall include in guidelines developed for use by local planning councils pursuant to subdivision (d) of Section 8499.5 guidance on identifying underserved areas and populations within counties. This guidance shall include reference to the direct impact indicators of need described in subdivision (c).

SEC. 4. Section 8499.5 of the Education Code is amended to read:

8499.5. (a) The department shall allocate child care funding pursuant to Chapter 2 (commencing with Section 8200) based on the amount of state and federal funding that is available. The department shall annually notify the local child care and development planning council in each county of the amount to be allocated within its county, and the timeline for these allocations.

(b) Upon approval by the county board of supervisors and the county superintendent of schools, each local planning council shall submit to the department the local priorities it has identified. The priorities shall be identified in a manner that ensures that all child care needs in the county are met to the greatest extent possible. To accomplish this, each local planning council shall do all of the following:

(1) Elect a chair and select a staff.

(2) Conduct an assessment of child care needs in the county no less than once every five years. The needs assessment shall take into consideration all of the following:

(A) The needs of families eligible for subsidized child care.

(B) The needs of families not eligible for subsidized child care.

(C) The waiting lists for programs funded by the department and the State Department of Social Services.

(D) The need for child care for children who have been abused or neglected or are at risk of abuse or neglect.

(E) The number of children receiving public assistance.

(F) Family income among families with preschool or schoolage children.

(G) The number of children of migrant workers.

(H) The number of children with special needs.

(I) The number of children from all identifiable linguistic and cultural backgrounds.

(J) Special needs based on geographic considerations, including rural areas.

(K) The age of children needing services.

(L) Any other factors deemed appropriate by the local planning council.

(3) Document information gathered during the needs assessment which shall include, but need not be limited to, data on supply, demand, cost, and market rates for each category of child care in the county.

(4) Encourage public input in the development of the priorities. Opportunities for public input shall include at least one public hearing during which members of the public can comment on the proposed priorities.

(5) Prepare a comprehensive countywide child care plan designed to mobilize public and private resources to address identified needs.

(6) Conduct a periodic review of child care programs funded by the department and the Department of Social Services to determine if identified priorities are being met.

(7) Collaborate with subsidized and nonsubsidized child care providers, county welfare departments and human service agencies, job training programs, employers, integrated child and family service councils, parent organizations, and other interested parties to foster partnerships designed to meet local child care needs.

(8) Design a system to consolidate local child care waiting lists.

(9) Coordinate part-day programs, including state preschool and Head Start, with other child care to provide full-day child care.

(10) Submit the results of the needs assessment and the local priorities identified by the local planning council to the board of supervisors and the county superintendent for approval before submitting them to the department.

(11) Review and comment on proposals submitted to the department that concern child care to be provided within the geographic area covered by the local planning council. These comments shall in no way be binding on the department in the determination of programs to be funded.

(12) Identify at least one, but no more than two persons from the local planning council, one selected by the board of supervisors and one selected by the county superintendent if two persons are identified, or one person selected by both appointing agencies, to serve as part of the department team that reviews and scores proposals for the provision of services funded through contracts with the department. Local planning council representatives shall not review and score proposals from the geographic area covered by their own local planning council.

(13) Develop and implement a training plan to provide increased efficiency, productivity, and facilitation of local planning council meetings. This may include developing a training manual, hiring facilitators, and identifying strategies to meet the objectives of the council.

(14) Provide consultation to the State Department of Education and the State Department of Social Services regarding the development of a single application and intake form for all federal and state subsidized child care and development services.

(c) No member of a local planning council shall participate in a vote if he or she has a proprietary interest in the outcome of the matter being voted upon.

(d) The department shall, in conjunction with the Department of Social Services and all appropriate statewide agencies and associations, develop guidelines for use by local planning councils to assist them in conducting needs assessments that are reliable and accurate. The guidelines shall include acceptable sources of demographic and child care data, and methodologies for assessing child care supply and demand, including the supply and demand for license-exempt child care.

(e) The department shall allocate funding within each county in accordance with the priorities identified by the local planning council of that county and submitted to the department pursuant to this section, unless the priorities do not meet the requirements of state or federal law.

CHAPTER 656

An act to amend Section 11837 of the Health and Safety Code, and to amend Sections 1821, 23161, 23249.52, 23249.53, and 23249.55 of, to repeal Sections 23249.57 and 23249.58 of, and to amend, repeal, and add Section 23249.54 of, the Vehicle Code, relating to vehicles.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 11837 of the Health and Safety Code is amended to read:

11837. (a) Pursuant to the provisions of law relating to suspension of a person's privilege to operate a motor vehicle upon conviction for driving while under the influence of any alcoholic beverage or drug, or under the combined influence of any alcoholic beverage and any drug, as set forth in paragraph (3) or (4) of subdivision (a) of Section 13352 of the Vehicle Code, the Department of Motor Vehicles shall restrict the driving privilege pursuant to

Section 13352.5 of the Vehicle Code, if the court has notified the department pursuant to Section 13352.5 of the Vehicle Code that the person convicted of that offense has consented to participate for at least 18 months in a program designed to offer alcohol and other drug education and counseling services that is licensed pursuant to this chapter.

(b) In determining whether to refer a person, who is ordered to participate in a program pursuant to Section 668 of the Harbors and Navigation Code, in a licensed alcohol and other drug education and counseling services program pursuant to Section 23161 of the Vehicle Code, or, pursuant to Section 23166, 23171, 23176, 23181, 23186, or 23191 of the Vehicle Code, in a licensed 18-month or 30-month program, the court may consider any relevant information about the person made available pursuant to a presentence investigation, that is permitted but not required under Section 23205 of the Vehicle Code, or other screening procedure. That information shall not be furnished, however, by any person who also provides services in a privately operated, licensed program or who has any direct interest in a privately operated, licensed program. In addition, the court shall obtain from the Department of Motor Vehicles a copy of the person's driving record to determine whether the person is eligible to participate in a licensed 18-month or 30-month program pursuant to this chapter. When preparing a presentence report for the court, the probation department may consider the suitability of placing the defendant in a treatment program that includes the administration of nonscheduled nonaddicting medications to ameliorate an alcohol or controlled substance problem. If the probation department recommends that this type of program is a suitable option for the defendant, the defendant who would like the court to consider this option shall obtain from his or her physician a prescription for the medication, and a finding that the treatment is medically suitable for the defendant, prior to consideration of this alternative by the court.

(c) (1) The court shall, as a condition of probation pursuant to Section 23161 or 23181 of the Vehicle Code, refer a first offender whose concentration of alcohol in his or her blood was less than 0.20 percent, by weight, to participate for at least three months or longer, as ordered by the court, in a licensed program that consists of at least 30 hours of program activities, including those education, group counseling, and individual interview sessions described in this chapter. Notwithstanding Section 13352.5 of the Vehicle Code, a first offender who is referred to a licensed program pursuant to Section 23161 or 23181 of the Vehicle Code may participate in a program if convicted of another offense punishable under Section 23165 or 23185 of the Vehicle Code.

(2) Notwithstanding any other provision of law, in granting probation to a first offender described in this subdivision whose concentration of alcohol in the persons blood was 0.20 percent or more, by weight, or the person refused to take a chemical test, the

court shall order the person to participate, for at least six months or longer, as ordered by the court, in a licensed program that consists of at least 45 hours of program activities, including those education, group counseling, and individual interview sessions described in this chapter.

(d) (1) The State Department of Alcohol and Drug Programs shall specify in regulations the activities required to be provided in the treatment of participants receiving six months of licensed program services under Sections 23161 or 23181 of the Vehicle Code.

(2) Any program licensed pursuant to this chapter may provide treatment services to participants receiving at least six months of licensed program services under Section 23161 or 23181 of the Vehicle Code.

(e) The court may, subject to Section 11837.2, and as a condition of probation, refer a person to a licensed program, even though the person's privilege to operate a motor vehicle is restricted, suspended, or revoked. An 18-month program described in Section 23166 or 23186 of the Vehicle Code or a 30-month program described in Section 23171, 23176, or 23191 of the Vehicle Code may include treatment of family members and significant other persons related to the convicted person with the consent of those family members and others as described in this chapter, if there is no increase in the costs of the program to the convicted person.

(f) The clerk of the court shall indicate the duration of the program in which the judge has ordered the person to participate in the abstract of the record of the court that is forwarded to the department.

SEC. 1.5. Section 11837 of the Health and Safety Code is amended to read:

11837. (a) Pursuant to the provisions of law relating to suspension of a person's privilege to operate a motor vehicle upon conviction for driving while under the influence of any alcoholic beverage or drug, or under the combined influence of any alcoholic beverage and any drug, as set forth in paragraph (3) of subdivision (a) of Section 13352 of the Vehicle Code, the Department of Motor Vehicles shall restrict the driving privilege pursuant to Section 13352.5 of the Vehicle Code, if the court has notified the department pursuant to Section 13352 of the Vehicle Code that the person convicted of that offense has consented to participate for at least 18 months in a program designed to offer alcohol and other drug education and counseling services that is licensed pursuant to this chapter.

(b) In determining whether to refer a person, who is ordered to participate in a program pursuant to Section 668 of the Harbors and Navigation Code, in a licensed alcohol and other drug education and counseling services program pursuant to Section 23161 of the Vehicle Code, or, pursuant to Section 23166, 23171, 23176, 23181, 23186, or 23191 of the Vehicle Code, in a licensed 18-month or 30-month

program, the court may consider any relevant information about the person made available pursuant to a presentence investigation, that is permitted but not required under Section 23205 of the Vehicle Code, or other screening procedure. That information shall not be furnished, however, by any person who also provides services in a privately operated, licensed program or who has any direct interest in a privately operated, licensed program. In addition, the court shall obtain from the Department of Motor Vehicles a copy of the person's driving record to determine whether the person is eligible to participate in a licensed 18-month or 30-month program pursuant to this chapter. When preparing a presentence report for the court, the probation department may consider the suitability of placing the defendant in a treatment program that includes the administration of nonscheduled nonaddicting medications to ameliorate an alcohol or controlled substance problem. If the probation department recommends that this type of program is a suitable option for the defendant, the defendant who would like the court to consider this option shall obtain from his or her physician a prescription for the medication, and a finding that the treatment is medically suitable for the defendant, prior to consideration of this alternative by the court.

(c) (1) The court shall, as a condition of probation pursuant to Section 23161 or 23181 of the Vehicle Code, refer a first offender whose concentration of alcohol in his or her blood was less than 0.20 percent, by weight, to participate for at least three months or longer, as ordered by the court, in a licensed program that consists of at least 30 hours of program activities, including those education, group counseling, and individual interview sessions described in this chapter. Notwithstanding Section 13352.5 of the Vehicle Code, if a first offender who is referred to a licensed program pursuant to Section 23161 or 23181 of the Vehicle Code may participate in a program if convicted of another offense punishable under Section 23165 or 23185 of the Vehicle Code.

(2) Notwithstanding any other provision of law, in granting probation to a first offender described in this subdivision whose concentration of alcohol in the persons blood was 0.20 percent or more, by weight, or the person refused to take a chemical test, the court shall order the person to participate, for at least six months or longer, as ordered by the court, in a licensed program that consists of at least 45 hours of program activities, including those education, group counseling, and individual interview sessions described in this chapter.

(d) (1) The State Department of Alcohol and Drug Programs shall specify in regulations the activities required to be provided in the treatment of participants receiving six months of licensed program services under Section 23161 or 23181 of the Vehicle Code.

(2) Any program licensed pursuant to this chapter may provide treatment services to participants receiving at least six months of

licensed program services under Section 23161 or 23181 of the Vehicle Code.

(e) The court may, subject to Section 11837.2, and as a condition of probation, refer a person to a licensed program, even though the person's privilege to operate a motor vehicle is restricted, suspended, or revoked. An 18-month program described in Section 23166 or 23186 of the Vehicle Code or a 30-month program described in Section 23171, 23176, or 23191 of the Vehicle Code may include treatment of family members and significant other persons related to the convicted person with the consent of those family members and others as described in this chapter, if there is no increase in the costs of the program to the convicted person.

(f) The clerk of the court shall indicate the duration of the program in which the judge has ordered the person to participate in the abstract of the record of the court that is forwarded to the department.

SEC. 2. Section 1821 of the Vehicle Code is amended to read:

1821. (a) The department shall establish and maintain a data and monitoring system to evaluate the efficacy of intervention programs for persons convicted of violations of Section 23152 or 23153.

(b) The system may include a recidivism tracking system. The recidivism tracking system may include, but not be limited to, jail sentencing, license restriction, license suspension, level I (first offender) and II (multiple offender) alcohol and drug education and treatment program assignment, alcohol and drug education treatment program readmission and dropout rates, adjudicating court, length of jail term, actual jail or alternative sentence served, type of treatment program assigned, actual program compliance status, subsequent accidents related to driving under the influence of alcohol or drugs, and subsequent convictions of violations of Section 23152 or 23153.

(c) The systems described in subdivisions (a) and (b) shall include an evaluation of the efficacy of the increased level of intervention resulting from the act that added this subdivision.

(d) The department shall submit an annual report of its evaluations to the Legislature. The evaluations shall include a ranking of the relative efficacy of criminal penalties, other sanctions, and intervention programs and the various combinations thereof, including, but not limited to, those described in subdivision (c).

SEC. 3. Section 23161 of the Vehicle Code is amended to read:

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

(1) Be confined in the county jail for at least 48 hours but not more than six months, and pay a fine of at least three hundred ninety dollars ($390) but not more than one thousand dollars ($1,000). The court

may order the Department of Motor Vehicles to suspend the privilege to operate a motor vehicle pursuant to paragraph (1) of subdivision (a) of Section 13352 when this condition of probation is imposed.

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

(3) If the court elects to order a 90-day restriction as provided for in paragraph (2), the court shall order that the restriction commence on the date of the reinstatement by the Department of Motor Vehicles of the person's privilege to operate a motor vehicle. If a suspension was imposed pursuant to Section 13353.2, the person shall be advised by the court of all of the following matters:

(A) The person's restricted driver's license does not allow the person to operate a motor vehicle unless and until the suspension under Section 13353.2 has either been served to completion or set aside, and his or her license has been reinstated.

(B) The restriction of the driver's license ordered by the court shall commence upon the reinstatement of the privilege to operate a motor vehicle.

(b) Except as provided in subdivision (c), in any county where the board of supervisors has approved, and the State Department of Alcohol and Drug Programs has licensed, a program or programs described in Section 11837.3 of the Health and Safety Code, the court shall also impose as a condition of probation that the driver shall enroll and participate in, and successfully complete, an alcohol and other drug education and counseling program, licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, in the driver's county of residence or employment, as designated by the court.

(1) The court shall refer a first offender whose blood-alcohol concentration was less than 0.20 percent, by weight, to participate for at least three months or longer, as ordered by the court, in a licensed program that consists of at least 30 hours of program activities, including those education, group counseling, and individual interview sessions described in Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code.

(2) The court shall refer a first offender whose blood-alcohol concentration was 0.20 percent or more, by weight, or who refused

to take a chemical test, to participate for at least six months or longer, as ordered by the court, in a licensed program that consists of at least 45 hours of program activities, including those education, group counseling, and individual interview sessions described in Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code.

(c) For persons who are active duty personnel in the United States Navy or Marine Corps, the court, unless the defendant requests otherwise, shall impose as a condition of probation that the driver participate in, and successfully complete, the Navy Alcohol Drug Safety Action Program rather than a program described in Section 11837.3 of the Health and Safety Code.

(d) (1) The court shall revoke the person's probation pursuant to Section 23207, except for good cause shown, for the failure to enroll in, participate in, or complete a program specified in subdivision (b) or (c).

(2) The court, in establishing reporting requirements, shall consult with the county alcohol program administrator. The county alcohol program administrator shall coordinate the reporting requirements with the department and with the State Department of Alcohol and Drug Programs. That reporting shall ensure that all persons who, after being ordered to attend and complete a program, may be identified for either (1) failure to enroll in, or failure to successfully complete, the program, or (2) successful completion of the program as ordered.

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

SEC. 4. Section 23249.52 of the Vehicle Code is amended to read:

23249.52. (a) Each county shall develop, implement, operate, and administer an alcohol and drug problem assessment program pursuant to this article for each person described in subdivision (b). The alcohol and drug problem assessment program may include a referral and client tracking component.

(b) (1) The court shall order a person to participate in an alcohol and drug problem assessment program pursuant to this article and the related regulations of the State Department of Alcohol and Drug Programs, if the person was convicted of a violation of Section 23152 or 23153 that occurred within seven years of a separate violation of Section 23152 or 23153 and resulted in a conviction, the person was required to attend a licensed program pursuant to a court order, and the person has once failed to comply with the rules and policies of the licensed program, other than a rule relating to the payment of fees, in accordance with the rules and regulations of the state department.

(2) A court may order any person convicted of a violation of Section 23152 or 23153 to attend an alcohol and drug problem assessment program pursuant to this article.

(c) The State Department of Alcohol and Drug Programs shall establish minimum specifications for alcohol and other drug problem assessments and reports not later than September 30, 1999.

SEC. 5. Section 23249.53 of the Vehicle Code is amended to read:

23249.53. (a) Any person convicted of a violation of Section 23152 or 23153 who is required to participate in a county alcohol and drug problem assessment program pursuant to this article shall participate in that program.

(b) Any person convicted of a violation of Section 23103, as specified in Section 23103.5, in a judicial district that participates in a county alcohol and drug problem assessment program pursuant to this article, may be ordered to participate in the program.

SEC. 6. Section 23249.54 of the Vehicle Code is amended to read:

23249.54. (a) An alcohol and drug problem assessment report shall be made on each person who participates in the program. The report may be used to determine the appropriate sentence for any person convicted of a violation of Section 23103, as specified in Section 23103.5, or Section 23152, or 23153.

(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 23249.54 is added to the Vehicle Code, to read:

23249.54. (a) Each county shall prepare, or contract to be prepared, an alcohol and drug problem assessment report on each person described in subdivision (b) of Section 23249.52.

(b) The assessment report shall include, if applicable, a recommendation for any additional treatment and the duration of the treatment. The treatment shall be in addition to the education and counseling program required under Section 11837 of the Health and Safety Code. The assessment report shall be submitted to the court not more than 14 days after the date the assessment was conducted.

(c) Within 30 days of the receipt of the report, the court shall order the person to complete the recommendations set forth in the report in satisfaction of, and consistent with, the terms and conditions of probation. If the court elects not to order the completion of the recommended plan, the court shall specify on the record its reason for not adopting these recommendations.

(d) This section shall become operative on January 1, 2000.

SEC. 8. Section 23249.55 of the Vehicle Code is amended to read:

23249.55. (a) Notwithstanding any other provision of law, in addition to any other fine or penalty assessment, there shall be levied an assessment of not more than one hundred dollars ($100) upon every fine, penalty, or forfeiture imposed and collected by the courts for a violation of Section 23152 or 23153 in any judicial district that

participates in a county alcohol and drug problem assessment program pursuant to this article. An assessment of not more than one hundred dollars ($100) shall be imposed and collected by the courts from each person convicted of a violation of Section 23103, as specified in Section 23103.5, who is ordered to participate in a county alcohol and drug problem assessment program pursuant to Section 23249.53.

(b) The court shall determine if the defendant has the ability to pay the assessment. If the court determines that the defendant has the ability to pay the assessment then the court may set the amount to be reimbursed and order the defendant to pay that sum to the county in the manner which the court determines is reasonable and compatible with the defendant's financial ability. In making a determination of whether a defendant has the ability to pay, the court shall take into account the amount of any fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution.

(c) Notwithstanding Section 1463 or 1464 of the Penal Code or any other provision of law, all moneys collected pursuant to this section shall be deposited in a special account in the county treasury and shall be used exclusively to pay for the costs of developing, implementing, operating, maintaining, and evaluating alcohol and drug problem assessment programs.

(d) On January 15 of each year, the treasurer of each county that administers an alcohol and drug problem assessment program shall determine those moneys in the special account which were not expended during the preceding fiscal year, and shall transfer those moneys to the general fund of the county.

(e) Any moneys remaining in the special account, if and when the alcohol and drug problem assessment program is terminated, shall be transferred to the general fund of the county.

(f) The county treasurer shall annually transfer an amount of money equal to the county's administrative cost incurred pursuant to this section, as he or she shall determine, from the special account to the general fund of the county.

SEC. 9. Section 23249.57 of the Vehicle Code is repealed.

SEC. 10. Section 23249.58 of the Vehicle Code is repealed.

SEC. 11. Section 1.5 of this bill incorporates amendments to Section 11837 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 or before January 1, 1999, (2) each bill amends Section 11837 of the Health and Safety Code, and (3) this bill is enacted after AB 762, in which case Section 1 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 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 657

An act to amend and renumber the heading of Article 1 (commencing with Section 81300) of Chapter 2 of, to add the heading of Chapter 2 (commencing with Section 81250) to, to add Article 1 (commencing with Section 81250) to Chapter 2 of, and to repeal the heading of Chapter 2 (commencing with Section 81300) of, Part 49 of the Education Code, and to add Section 20651.5 to the Public Contract Code, relating to community colleges.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. The heading of Chapter 2 (commencing with Section 81250) is added to Part 49 of the Education Code, to read:

CHAPTER 2. PROPERTY: SALE, LEASE, USE, GIFT, AND EXCHANGE

SEC. 2. Article 1 (commencing with Section 81250) is added to Chapter 2 of Part 49 of the Education Code, to read:

Article 1. General Provisions

81250. (a) The governing board of a community college district may, after a public hearing on the matter, request the Board of Governors of the California Community Colleges to waive, insofar as necessary to accomplish the purpose of the waiver request, all or part of any section of this chapter, other than any provision of this article,

or any regulation adopted by the Board of Governors that implements a provision of this chapter.

(b) If a waiver request involves the sale or lease of district real property, the governing board of a district requesting a waiver shall provide written notice of the public hearing conducted pursuant to subdivision (a), at least 30 days prior to the hearing, to any city, county, park or recreation district, regional park authority, or public housing authority within which the land may be situated.

81252. (a) The Board of Governors of the California Community Colleges may approve any request for waiver upon finding that the waiver would promote efficiency and further the public benefit. Waivers may be approved for purposes including, but not necessarily limited to, joint or shared use of property and facilities and for collaborative partnerships between colleges and other public and private entities.

(b) The Board of Governors of the California Community Colleges shall not approve any request for waiver of any provision of this chapter pursuant to Section 81250 unless the district seeking the waiver demonstrates all of the following:

(1) The district has provided the written notice required by subdivision (b) of Section 81250.

(2) The district, after making a good faith effort, was unable to reach agreement with any public agency that sought to acquire the site pursuant to Section 81363.5.

(3) The waiver will not substantially increase state costs or decrease state revenues.

(4) The waiver will further the ability of the district to meet the educational needs of the community.

81254. The Chancellor of the California Community Colleges shall annually report to the Governor and Legislature on the number, types, and disposition of waiver requests submitted pursuant to Section 81250.

SEC. 3. The heading of Chapter 2 (commencing with Section 81300) of Part 49 of the Education Code is repealed.

SEC. 4. The heading of Article 1 (commencing with Section 81300) of Chapter 2 of Part 49 of the Education Code is amended and renumbered to read:

Article 1.5. Conveyances

SEC. 5. Section 20651.5 is added to the Public Contract Code, to read:

20651.5. (a) The governing board of any community college district may require each prospective bidder for a contract, as described under Section 20651, to complete and submit to the district a standardized questionnaire and financial statement in a form specified by the district, including a complete statement of the prospective bidder's financial ability and experience in performing

public works. The questionnaire and financial statement shall be verified under oath by the bidder in the manner in which civil pleadings in civil actions are verified. The questionnaire responses of prospective bidders and their financial statements shall not be deemed public records and shall not be open to public inspection.

(b) Any community college district requiring prospective bidders to complete and submit questionnaires and financial statements, as described in subdivision (a), shall adopt and apply a uniform system of rating bidders on the basis of the completed questionnaires and financial statements, in order to determine the size of the contracts upon which each bidder shall be deemed financially qualified to bid. The prequalification of a prospective bidder shall neither limit nor preclude a district's subsequent consideration of a prequalified bidder's responsibility on factors other than the prospective bidder's financial qualifications.

(c) Each prospective bidder on any contract described under Section 20651 that is subject to this section shall be furnished, by the community college district letting the contract, with a standardized proposal form that, when completed and executed, shall be submitted as his or her bid. Bids not presented on the forms so furnished shall be deemed nonresponsive and shall be rejected. A proposal form shall not be accepted from any person who, or other entity which, is required to submit a completed questionnaire and financial statement for prequalification pursuant to subdivision (a), but who or which has not done so at least five days prior to the date fixed for the public opening of sealed bids and has not been prequalified, pursuant to subdivision (b), at least one day prior to that date.

SEC. 6. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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

CHAPTER 658

An act to add Section 1380.1 to the Health and Safety Code, relating to health care coverage.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 1380.1 is added to the Health and Safety Code, to read:

1380.1. (a) (1) With the department as the lead agency, the department and the State Department of Health Services shall convene a working group for the purpose of developing standards for quality audits of providers that provide services to enrollees pursuant to contracts governed by this chapter.

(2) The working group shall include, but not be limited to, representatives of health care service plans, consumer organizations, public and private purchasers of health care, and providers, including medical groups, independent practice associations, and health facilities.

(3) The working group shall be comprised so that a balance of perspectives of providers, plans, purchasers of health care, and consumers can reasonably be expected to be represented.

(4) The department may consult with the National Commission on Quality Assurance, the federal Health Care Financing Authority, and other organizations that have worked toward defining quality standards.

(5) The department shall consult with the State Department of Health Services on the implementation of this section.

(6) The Legislature recognizes that streamlining audits, and defining quality standards, are best achieved with consideration of federal regulatory and third party auditing standards.

(b) To the extent feasible, the goals of this working group shall include, but not be limited to, all of the following:

(1) Recommending ways to reduce duplicative audits of providers by health plans.

(2) Developing a core set of health care quality standards that can serve as baseline requirements for meeting audit standards for contracts governed by this chapter.

(3) Recommending data collection methods and processes that can result in better coordination of health care quality audits, lessen the burden on providers, and maintain high quality standards for providers.

(4) Developing recommendations as to how health care service plans can best access quality information about providers in order to ensure higher quality standards than those core standards identified by the working group.

(5) Recommending standards for determining appropriate nonprofit organizations to conduct audits pursuant to the standards developed in this section.

(6) Determining how the results of quality audits shall be made available to the public.

(c) The department shall report to the Governor, the Department of Corporations, the State Department of Health Services, and the appropriate committees of the Legislature, on or before January 1, 2000, its findings and recommendations pursuant to this section.

CHAPTER 659

An act to amend Section 831.8 of, and to add and repeal Section 831.9 of, the Government Code, relating to liability.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 831.8 of the Government Code is amended to read:

831.8. (a) Subject to subdivisions (d) and (e), neither a public entity nor a public employee is liable under this chapter for an injury caused by the condition of a reservoir if at the time of the injury the person injured was using the property for any purpose other than that for which the public entity intended or permitted the property to be used.

(b) Subject to subdivisions (d) and (e), neither an irrigation district nor an employee thereof nor the state nor a state employee is liable under this chapter for an injury caused by the condition of canals, conduits or drains used for the distribution of water if at the time of the injury the person injured was using the property for any purpose other than that for which the district or state intended it to be used.

(c) Subject to subdivisions (d) and (e), neither a public agency operating flood control and water conservation facilities nor its employees are liable under this chapter for an injury caused by the condition or use of unlined flood control channels or adjacent groundwater recharge spreading grounds if, at the time of the injury, the person injured was using the property for any purpose other than that for which the public entity intended it to be used, and, if all of the following conditions are met:

(1) The public agency operates and maintains dams, pipes, channels, and appurtenant facilities to provide flood control protection and water conservation for a county whose population exceeds nine million residents.

(2) The public agency operates facilities to recharge a groundwater basin system which is the primary water supply for more than one million residents.

(3) The groundwater supply is dependent on imported water recharge which must be conducted in accordance with court-imposed basin management restrictions.

(4) The basin recharge activities allow the conservation and storage of both local and imported water supplies when these waters are available.

(5) The public agency posts conspicuous signs warning of any increase in water flow levels of an unlined flood control channel.

(d) Nothing in this section exonerates a public entity or a public employee from liability for injury proximately caused by a dangerous condition of property if all of the following occur:

(1) The injured person was not guilty of a criminal offense under Article 1 (commencing with Section 552) of Chapter 12 of Title 13 of Part 1 of the Penal Code in entering on or using the property.

(2) The condition created a substantial and unreasonable risk of death or serious bodily harm when such property or adjacent property was used with due care in a manner in which it was reasonably foreseeable that it would be used.

(3) The dangerous character of the condition was not reasonably apparent to, and would not have been anticipated by, a mature, reasonable person using the property with due care.

(4) The public entity or the public employee had actual knowledge of the condition and knew or should have known of its dangerous character a sufficient time prior to the injury to have taken measures to protect against the condition.

(e) Nothing in this section exonerates a public entity or a public employee from liability for injury proximately caused by a dangerous condition of property if all of the following occur:

(1) The person injured was less than 12 years of age.

(2) The dangerous condition created a substantial and unreasonable risk of death or serious bodily harm to children under 12 years of age using the property or adjacent property with due care in a manner in which it was reasonably foreseeable that it would be used.

(3) The person injured, because of his or her immaturity, did not discover the condition or did not appreciate its dangerous character.

(4) The public entity or the public employee had actual knowledge of the condition and knew or should have known of its dangerous character a sufficient time prior to the injury to have taken measures to protect against the condition.

(f) Subdivision (c) shall become inoperative on and after January 1, 2002.

SEC. 2. Section 831.9 is added to the Government Code, to read:

831.9. (a) The County of Los Angeles Department of Public Works shall maintain a record of all known or reported injuries incurred by the public in the unlined flood control channels or adjacent groundwater recharge spreading grounds during the activities of groundwater recharge. The County of Los Angeles

Department of Public Works shall also maintain a record of all claims, paid and not paid, including any civil actions or proceedings and their results, arising from those incidents, that were filed against the county. Beginning in 2000, copies of these records shall be filed annually, no later than January 1 of each year, with the Judicial Council, which shall then submit a report to the Legislature on or before January 31, 2001, on the incidences of injuries incurred, claims asserted, and the results of any civil action or proceeding filed, by persons injured at these facilities.

(b) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2002, deletes or extends that date.

SEC. 3. 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 660

An act to add Article 7.5 (commencing with Section 1569.80) to Chapter 3.2 of Division 2 of the Health and Safety Code, relating to residential care facilities for the elderly.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Residential care facilities for the elderly provide a continuum of long-term care services that support the fluctuating social and personal care needs of elderly residents.

(2) Health-related services, including home health care, when utilized appropriately and coordinated and managed effectively, can enhance the quality of care for residents of a residential care facility for the elderly.

(3) Flexibility is the hallmark of residential care facilities for the elderly. However, in order for that flexibility to benefit a resident, it is necessary that the resident, and his or her representative, if any,

be able to participate in decisionmaking regarding the care and services to be provided to the resident.

(4) Under existing law, neither a resident nor his or her representative has the right to participate in the decisionmaking regarding the care and services the resident will receive at a residential care facility for the elderly. A resident or resident's representative has the right to be involved only in the development of an appraisal, which determines whether it is appropriate to admit the resident to, or retain the resident at, a residential care facility for the elderly. A plan of action is required only if the appraisal identifies a need that cannot be met by the facility's general program. The plan of action shall be developed by the licensee and a professional consultant, without the participation of the resident or resident's representative.

(b) It is therefore the intent of the Legislature to require that a resident's care at a residential care facility for the elderly be discussed and planned, at a meeting attended by the resident, the resident's representative, if any, a member or members of the facility's staff, and, if applicable pursuant to Section 1569.725, a representative of the home health agency, to determine the care and services to be provided to the resident.

(c) It is also the intent of the Legislature that a residential care facility for the elderly or a home health agency shall not be precluded from meeting other state or federal obligations at a meeting required by this act.

SEC. 2. Article 9 (commencing with Section 1569.80) is added to Chapter 3.2 of Division 2 of the Health and Safety Code, to read:

Article 7.5. Resident Participation in Decisionmaking

1569.80. (a) A resident of a residential care facility for the elderly, or the resident's representative, or both, shall have the right to participate in decisionmaking regarding the care and services to be provided to the resident. Accordingly, prior to, or within two weeks after, the resident's admission, the facility shall coordinate a meeting with the resident and the resident's representative, if any, an appropriate member or members of the facility's staff, if the resident is receiving home health services in the facility, a representative of the home health agency involved, and any other appropriate parties. The facility shall ensure that participants in the meeting prepare a written record of the care the resident will receive in the facility, and the resident's preferences regarding the services provided at the facility.

(b) Once prepared, the written record described in subdivision (a) shall be used by the facility, and, if applicable pursuant to Section 1569.725, the home health agency, to determine the care and services provided to the resident. If the resident has a regular physician, the written record shall be sent by the facility to that physician.

(c) The written record described in subdivision (a) shall be reviewed, and, if necessary, revised, at least once every 12 months, or upon a significant change in the resident's condition, as defined by regulations, whichever occurs first. The review shall take place at a meeting coordinated by the facility, and attended by the resident, the resident's representative, if any, an appropriate member or members of the facility's staff, and, if the resident is receiving home health services in the facility, a representative from the home health agency involved.

(d) This section shall not preclude a residential care facility for the elderly or home health agency from satisfying other state or federal obligations at a meeting required by subdivision (a) or (c).

(e) If the residential care facility for the elderly is a continuing care retirement community, as defined in paragraph (10) of subdivision (c) of Section 1771, this section shall apply only to residents who require care and supervision, as defined in subdivision (b) of Section 1569.2.

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 661

An act to amend Section 23166 of the Vehicle Code, relating to driving under the influence.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 23166 of the Vehicle Code is amended to read:

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

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

(b) All of the following:

(1) Be confined in the county jail for at least 96 hours, but not more than one year. A sentence of 96 hours of confinement shall be served in two increments consisting of a continuous 48 hours each. The two 48-hour increments may be served nonconsecutively.

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

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

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

(4) Either of the following:

(A) Enroll and participate, for at least 18 months subsequent to the date of the underlying violation and in a manner satisfactory to the court, in a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, as designated by the court. The person shall complete the entire program subsequent to, and shall not be given any credit for any program activities completed prior to, the date of the current violation. The program shall provide for persons who cannot afford the program fee pursuant to paragraph (2) of subdivision (b) of Section 11837.4 of the Health and Safety Code in order to enable those persons to participate.

(B) Enroll and participate, for at least 30 months subsequent to the date of the underlying violation and in a manner satisfactory to the court, in a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code. The person shall complete the entire program subsequent to, and shall not be given any credit for any program activities

completed prior to, the date of the current violation. A person ordered to treatment pursuant to this subparagraph shall apply to the court or to a board of review, as designated by the court, at the conclusion of the program to obtain the court's order of satisfaction. Only upon the granting of that order of satisfaction by the court may the program issue its certificate of successful completion and report the completion to the Department of Motor Vehicles. A failure to obtain an order of satisfaction at the conclusion of the program is a violation of probation. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code. No condition of probation required pursuant to this subparagraph is a basis for reducing any other probation requirement or for avoiding the mandatory license revocation provisions of paragraph (5) of subdivision (a) of Section 13352.

SEC. 2. 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 662

An act to amend Sections 331, 331.1, 3060, 3062, 3066, 3067, and 11713.3 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 331 of the Vehicle Code is amended to read:

331. (a) A "franchise" is a written agreement between two or more persons having all of the following conditions:

(1) A commercial relationship of definite duration or continuing indefinite duration.

(2) The franchisee is granted the right to offer for sale or lease, or to sell or lease at retail new motor vehicles manufactured or distributed by the franchisor or the right to perform authorized

warranty repairs and service, or the right to perform any combination of these activities.

(3) The franchisee constitutes a component of the franchisor's distribution system.

(4) The operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, advertising, or other commercial symbol designating the franchisor.

(5) The operation of a portion of the franchisee's business is substantially reliant on the franchisor for a continued supply of new vehicles, parts, or accessories.

(b) The term "franchise" does not include an agreement entered into by a manufacturer or distributor and a person where all the following apply:

(1) The person is authorized to perform warranty repairs and service on vehicles manufactured or distributed by the manufacturer or distributor.

(2) The person is not a new motor vehicle dealer franchisee of the manufacturer or distributor.

(3) The person's repair and service facility is not located within the relevant market area of a new motor vehicle dealer franchisee of the manufacturer or distributor.

SEC. 2. Section 331.1 of the Vehicle Code is amended to read:

331.1. A "franchisee" is any person who, pursuant to a franchise, receives new motor vehicles subject to registration under this code or new off-highway motorcycles, as defined in Section 436, from the franchisor and who offers for sale or lease, or sells or leases the vehicles at retail or is granted the right to perform authorized warranty repairs and service, or the right to perform any combination of these activities.

SEC. 3. Section 3060 of the Vehicle Code is amended to read:

3060. (a) Notwithstanding Section 20999.1 of the Business and Professions Code or the terms of any franchise, no franchisor shall terminate or refuse to continue any existing franchise unless all of the following conditions are met:

(1) The franchisee and the board have received written notice from the franchisor as follows:

(A) Sixty days before the effective date thereof setting forth the specific grounds for termination or refusal to continue.

(B) Fifteen days before the effective date thereof setting forth the specific grounds with respect to any of the following:

(i) Transfer of any ownership or interest in the franchise without the consent of the franchisor, which consent shall not be unreasonably withheld.

(ii) Misrepresentation by the franchisee in applying for the franchise.

(iii) Insolvency of the franchisee, or filing of any petition by or against the franchisee under any bankruptcy or receivership law.

(iv) Any unfair business practice after written warning thereof.

(v) Failure of the motor vehicle dealer to conduct its customary sales and service operations during its customary hours of business for seven consecutive business days, giving rise to a good faith belief on the part of the franchisor that the motor vehicle dealer is in fact going out of business, except for circumstances beyond the direct control of the motor vehicle dealer or by order of the department.

(C) The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line to segregate it from the rest of the text, one of the following statements, whichever is applicable:

[To be inserted when a 60-day notice of termination is given.]

"NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 30 calendar days after receiving this notice or within 30 days after the end of any appeal procedure provided by the franchisor or your protest right will be waived."

[To be inserted when a 15-day notice of termination is given.]

"NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 10 calendar days after receiving this notice or within 10 days after the end of any appeal procedure provided by the franchisor or your protest right will be waived."

(2) Except as provided in Section 3050.7, the board finds that there is good cause for termination or refusal to continue, following a hearing called pursuant to Section 3066. The franchisee may file a protest with the board within 30 days after receiving a 60-day notice, satisfying the requirements of this section, or within 30 days after the end of any appeal procedure provided by the franchisor, or within 10 days after receiving a 15-day notice, satisfying the requirements of this section, or within 10 days after the end of any appeal procedure provided by the franchisor. When a protest is filed, the board shall advise the franchisor that a timely protest has been filed, that a hearing is required pursuant to Section 3066, and that the franchisor may not terminate or refuse to continue until the board makes its findings.

(3) The franchisor has received the written consent of the franchisee, or the appropriate period for filing a protest has elapsed.

(b) (1) Notwithstanding Section 20999.1 of the Business and Professions Code or the terms of any franchise, no franchisor shall modify or replace a franchise with a succeeding franchise if the modification or replacement would substantially affect the franchisee's sales or service obligations or investment, unless the franchisor has first given the board and each affected franchisee written notice thereof at least 60 days in advance of the modification

or replacement. Within 30 days of receipt of the notice, satisfying the requirement of this section, or within 30 days after the end of any appeal procedure provided by the franchisor, a franchisee may file a protest with the board and the modification or replacement does not become effective until there is a finding by the board that there is good cause for the modification or replacement. If, however, a replacement franchise is the successor franchise to an expiring or expired term franchise, the prior franchise shall continue in effect until resolution of the protest by the board. In the event of multiple protests, hearings shall be consolidated to expedite the disposition of the issue.

(2) The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line to segregate it from the rest of the text, the following statement:

"NOTICE TO DEALER: Your franchise agreement is being modified or replaced. If the modification or replacement will substantially affect your sales or service obligations or investment, you have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the proposed modification or replacement of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 30 calendar days of your receipt of this notice or within 30 days after the end of any appeal procedure provided by the franchisor or your protest rights will be waived."

SEC. 4. Section 3062 of the Vehicle Code is amended to read:

3062. (a) (1) Except as otherwise provided in subdivision (b), if a franchisor seeks to enter into a franchise establishing an additional motor vehicle dealership within a relevant market area where the same line-make is then represented, or seeks to relocate an existing motor vehicle dealership, the franchisor shall, in writing, first notify the board and each franchisee in that line-make in the relevant market area of the franchisor's intention to establish an additional dealership or to relocate an existing dealership within or into that market area. Within 20 days of receiving the notice, satisfying the requirements of this section, or within 20 days after the end of any appeal procedure provided by the franchisor, any franchisee required to be given the notice may file with the board a protest to the establishing or relocating of the dealership. If, within this time, a franchisee files with the board a request for additional time to file a protest, the board or its secretary, upon a showing of good cause, may grant an additional 10 days to file the protest. When such a protest is filed, the board shall inform the franchisor that a timely protest has been filed, that a hearing is required pursuant to Section 3066, and that the franchisor shall not establish or relocate the proposed dealership until the board has held a hearing as provided in Section 3066, nor thereafter, if the board has determined that there is good cause for not permitting the dealership. In the event of

multiple protests, hearings may be consolidated to expedite the disposition of the issue.

(2) If a franchisor seeks to enter into a franchise that authorizes a satellite warranty facility to be established at, or relocated to, a proposed location which is within two miles of any dealership of the same line-make, the franchisor shall first give notice in writing of the franchisor's intention to establish or relocate a satellite warranty facility at the proposed location to the board and each franchisee operating a dealership of the same line-make within two miles of the proposed location. Within 20 days of receiving the notice satisfying the requirements of this section, or within 20 days after the end of any appeal procedure provided by the franchisor, any franchisee required to be given the notice may file with the board a protest to the establishing or relocating of the satellite warranty facility. If, within this time, a franchisee files with the board a request for additional time to file a protest, the board or its secretary, upon a showing of good cause, may grant an additional 10 days to file the protest. When such a protest is filed, the board shall inform the franchisor that a timely protest has been filed, that a hearing is required pursuant to Section 3066, and that the franchisor shall not establish or relocate the proposed satellite warranty facility until the board has held a hearing as provided in Section 3066, nor thereafter, if the board has determined that there is good cause for not permitting the satellite warranty facility. In the event of multiple protests, hearings may be consolidated to expedite the disposition of the issue.

(3) The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line to segregate it from the rest of the text, the following statement:

"NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing on your protest under the terms of the California Vehicle Code if you oppose this action. You must file your protest with the board within 20 days of your receipt of this notice, or within 20 days after the end of any appeal procedure that is provided by us to you. If within this time you file with the board a request for additional time to file a protest, the board or its secretary, upon a showing of good cause, may grant you an additional 10 days to file the protest."

(b) Subdivision (a) does not apply to either of the following:

(1) The relocation of an existing dealership to any location that is both within the same city as, and is within one mile from, the existing dealership location.

(2) The establishment at any location that is both within the same city as, and is within one-quarter mile from, the location of a dealership of the same line-make that has been out of operation for less than 90 days.

(c) Subdivision (a) does not apply to any display of vehicles at a fair, exposition, or similar exhibit if no actual sales are made at the

event and the display does not exceed 30 days. This subdivision shall not be construed to prohibit a new vehicle dealer from establishing a branch office for the purpose of selling vehicles at the fair, exposition, or similar exhibit, even though that the event is sponsored by a financial institution, as defined in Section 31041 of the Financial Code or by a financial institution and a licensed dealer. The establishment of these branch offices, however, shall be in accordance with subdivision (a) where applicable.

(d) For the purposes of this section, the reopening of a dealership that has not been in operation for one year or more shall be deemed the establishment of an additional motor vehicle dealership.

(e) As used in this section, the following definitions apply:

(1) "Motor vehicle dealership" or "dealership" means any authorized facility at which a franchisee offers for sale or lease, displays for sale or lease, or sells or leases new motor vehicles.

(2) "Satellite warranty facility" means any facility operated by a franchisee where authorized warranty repairs and service are performed and the offer for sale or lease, the display for sale or lease, or the sale or lease of new motor vehicles is not authorized to take place.

SEC. 5. Section 3066 of the Vehicle Code is amended to read:

3066. (a) Upon receiving a notice of protest pursuant to Section 3060, 3062, 3064, 3065, or 3065.1, the board shall fix a time, which shall be within 60 days of the order, and place of hearing, and shall send by registered mail a copy of the order to the franchisor, the protesting franchisee, and all individuals and groups which have requested notification by the board of protests and decisions of the board. Except in any case involving a franchisee who deals exclusively in motorcycles, the board or its secretary may, upon a showing of good cause, accelerate or postpone the date initially established for a hearing, but in no event shall the hearing be rescheduled more than 90 days after the board's initial order. For the purpose of accelerating or postponing a hearing date, "good cause" includes, but is not limited to, the effects upon, and any irreparable harm to, the parties or interested persons or groups if the request for a change in hearing date is not granted. The board, or a hearing officer designated by the board, shall hear and consider the oral and documented evidence introduced by the parties and other interested individuals and groups, and the board shall make its decision solely on the record so made. Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code and Sections 11507.3, 11507.6, 11507.7, 11511, 11513, 11514, 11515, and 11517 of the Government Code apply to these proceedings.

(b) In any hearing on a protest filed pursuant to Section 3060 or 3062, the franchisor shall have the burden of proof to establish that there is good cause to modify, replace, terminate, or refuse to continue a franchise. The franchisee shall have the burden of proof

to establish that there is good cause not to enter into a franchise establishing or relocating an additional motor vehicle dealership.

(c) In any hearing on a protest alleging a violation of, or filed pursuant to, Section 3064, 3065, or 3065.1, the franchisee shall have the burden of proof, but the franchisor has the burden of proof to establish that a franchisee acted with intent to defraud the franchisor where that issue is material to a protest filed pursuant to Section 3065 or 3065.1.

(d) A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, or advise other members upon, or decide, any matter involving a protest filed pursuant to this article unless all parties to the protest stipulate otherwise.

SEC. 6. Section 3067 of the Vehicle Code is amended to read:

3067. (a) The decision of the board shall be in writing and shall contain findings of fact and a determination of the issues presented. The decision shall sustain, conditionally sustain, overrule, or conditionally overrule the protest. Any conditions imposed by the board shall be for the purpose of assuring performance of binding contractual agreements between franchisees and franchisors or otherwise serving the purposes of this article. If the board fails to act within 30 days after such hearing, within 30 days after the board receives a proposed decision where the case is heard before a hearing officer alone, or within such period as may be necessitated by Section 11517 of the Government Code or as may be mutually agreed upon by the parties, then the proposed action shall be deemed to be approved. Copies of the board's decision shall be delivered to the parties personally or sent to them by registered mail, as well as to all individuals and groups, which have requested notification by the board of protests and decisions by the board. The board's decision shall be final upon its delivery or mailing and no reconsideration or rehearing shall be permitted.

(b) Notwithstanding subdivision (b) of Section 11517 of the Government Code, if a protest is heard by a hearing officer alone, 10 days after receipt by the board of the hearing officer's proposed decision, a copy of the proposed decision shall be filed by the board as a public record and a copy shall be served by the board on each party and his or her attorney.

SEC. 7. Section 11713.3 of the Vehicle Code is amended to read:

11713.3. It is unlawful and a violation of this code for any manufacturer, manufacturer branch, distributor, or distributor branch licensed under this code to do any of the following:

(a) To refuse or fail to deliver in reasonable quantities and within a reasonable time after receipt of an order from a dealer having a franchise for the retail sale of any new vehicle sold or distributed by the manufacturer or distributor, any new vehicle or parts or accessories to new vehicles as are covered by the franchise, if the vehicle, parts, or accessories are publicly advertised as being available for delivery or actually being delivered. This subdivision is

not violated, however, if the failure is caused by acts or causes beyond the control of the manufacturer, manufacturer branch, distributor, or distributor branch.

(b) To prevent or require, or attempt to prevent or require, by contract or otherwise, any change in the capital structure of a dealership or the means by or through which the dealer finances the operation of the dealership, provided that the dealer at all times meets any reasonable capital standards agreed to by the dealer and the manufacturer or distributor, and also provided that no change in capital structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor.

(c) To prevent or require, or attempt to prevent or require, a dealer to change the executive management of a dealership, other than the principal dealership operator or operators if the franchise was granted the dealer in reliance upon the personal qualifications of such person or persons.

(d) (1) Except as provided in subdivision (t), to prevent or require, or attempt to prevent or require, by contract or otherwise, any dealer, or any officer, partner, or stockholder of any dealership, the sale or transfer of any part of the interest of any of them to any other person or persons. No dealer, officer, partner, or stockholder shall, however, have the right to sell, transfer, or assign the franchise, or any right thereunder, without the consent of the manufacturer or distributor except that the consent shall not be unreasonably withheld.

(2) (A) For the transferring franchisee to fail, prior to the sale, transfer, or assignment of a franchisee or the sale, assignment, or transfer of all or substantially all of the assets of the franchised business or a controlling interest in the franchised business to another person, to notify the manufacturer or distributor of the franchisee's decision to sell, transfer, or assign the franchise. The notice shall be in writing and shall include all of the following:

(i) The proposed transferee's name and address.

(ii) A copy of all of the agreements relating to the sale, assignment, or transfer of the franchised business or its assets.

(iii) The proposed transferee's application for approval to become the successor franchisee. The application shall include forms and related information generally utilized by the manufacturer or distributor in reviewing prospective franchisees, if those forms are readily made available to existing franchisees. As soon as practicable after receipt of the proposed transferee's application, the manufacturer or distributor shall notify the franchisee and the proposed transferee of any information needed to make the application complete.

(B) For the manufacturer or distributor, to fail on or before 60 days after the receipt of all of the information required pursuant to subparagraph (A), or as extended by a written agreement between

the manufacturer or distributor and the franchisee, to notify the franchisee of the approval or the disapproval of the sale, transfer, or assignment of the franchise. The notice shall be in writing and shall be personally served or sent by certified mail, return receipt requested, or by guaranteed overnight delivery service that provides verification of delivery and shall be directed to the franchisee. Any proposed sale, assignment, or transfer shall be deemed approved, unless disapproved by the franchisor in the manner provided by this subdivision. If the proposed sale, assignment, or transfer is disapproved, the franchisor shall include in the notice of disapproval a statement setting forth the reasons for the disapproval.

(3) In any action in which the manufacturer's or distributor's withholding of consent under this subdivision or subdivision (e) is an issue, whether the withholding of consent was unreasonable is a question of fact requiring consideration of all the existing circumstances.

(e) To prevent, or attempt to prevent, a dealer from receiving fair and reasonable compensation for the value of the franchised business. There shall be no transfer or assignment of the dealer's franchise without the consent of the manufacturer or distributor, which consent shall not be unreasonably withheld or conditioned upon the release, assignment, novation, waiver, estoppel, or modification of any claim or defense by the dealer.

(f) To obtain money, goods, service, or any other benefit from any other person with whom the dealer does business, on account of, or in relation to, the transaction between the dealer and that other person, other than for compensation for services rendered, unless the benefit is promptly accounted for, and transmitted to, the dealer.

(g) To require a dealer to prospectively assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability to be imposed by this article or to require any controversy between a dealer and a manufacturer, distributor, or representative, to be referred to any person other than the board, if the referral would be binding on the dealer. This subdivision does not, however, prohibit arbitration before an independent arbitrator.

(h) To increase prices of motor vehicles which the dealer had ordered for private retail consumers prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer is evidence of each such order. In the event of manufacturer price reductions, the amount of the reduction received by a dealer shall be passed on to the private retail consumer by the dealer if the retail price was negotiated on the basis of the previous higher price to the dealer. Price reductions apply to all vehicles in the dealer's inventory which were subject to the price reduction. Price differences applicable to new model or series motor vehicles at the time of the introduction of new models or series shall not be considered a price increase or price decrease. Price changes caused by either (1) the addition to a motor vehicle of required or

optional equipment pursuant to state or federal law, or (2) revaluation of the United States dollar in the case of foreign-make vehicles, are not subject to this subdivision.

(i) To fail to pay to a dealer, within a reasonable time following receipt of a valid claim by a dealer thereof, any payment agreed to be made by the manufacturer or distributor to the dealer by reason of the fact that a new vehicle of a prior year model is in the dealer's inventory at the time of introduction of new model vehicles.

(j) To deny the widow or heirs designated by a deceased owner of a dealership, the opportunity to participate in the ownership of the dealership or successor dealership under a valid franchise for a reasonable time after the death of the owner.

(k) To offer any refunds or other types of inducements to any person for the purchase of new motor vehicles of a certain line-make to be sold to the state or any political subdivision thereof without making the same offer to all other dealers in the same line-make within the relevant market area.

(*l*) To modify, replace, enter into, relocate, terminate or refuse to renew a franchise in violation of Article 4 (commencing with Section 3060) of Chapter 6 of Division 2.

(m) To employ a person as a representative who has not been licensed pursuant to Article 3 (commencing with Section 11900) of Chapter 4 of Division 5.

(n) To deny any dealer the right of free association with any other dealer for any lawful purpose.

(o) To compete with a dealer in the same line-make operating under an agreement or franchise from a manufacturer or distributor in the relevant market area. A manufacturer or distributor shall not, however, be deemed to be competing when operating a dealership either temporarily for a reasonable period, or in a bona fide retail operation which is for sale to any qualified independent person at a fair and reasonable price, or in a bona fide relationship in which an independent person has made a significant investment subject to loss in the dealership and can reasonably expect to acquire full ownership of the dealership on reasonable terms and conditions. A distributor shall not be deemed to be competing when a wholly owned subsidiary corporation of the distributor sells motor vehicles at retail, if, for at least three years prior to January 1, 1973, the subsidiary corporation has been a wholly owned subsidiary of the distributor and engaged in the sale of vehicles at retail.

(p) To unfairly discriminate among its franchisees with respect to warranty reimbursement or authority granted its franchisees to make warranty adjustments with retail customers.

(q) To sell vehicles to persons not licensed under this chapter for resale.

(r) To fail to affix an identification number to any park trailer, as described in subdivision (b) of Section 18010 of the Health and Safety Code, which is manufactured on or after January 1, 1987, and which

does not clearly identify the unit as a park trailer to the department. The configuration of the identification number shall be approved by the department.

(s) To dishonor a warranty, rebate, or other incentive offered to the public or a dealer in connection with the retail sale of a new motor vehicle, based solely upon the fact that an autobroker arranged or negotiated the sale. This subdivision shall not prohibit the disallowance of that rebate or incentive if the purchaser or dealer is ineligible to receive the rebate or incentive pursuant to any other term or condition of a rebate or incentive program.

(t) To exercise a right of first refusal or any other right requiring a franchisee or any owner thereof to sell, transfer, or assign to the franchisor, or to any nominee of the franchisor, all or any material part of the franchised business or of the assets thereof unless all of the following requirements are met:

(1) The franchise authorizes the franchisor to exercise a right of first refusal to acquire the franchised business or assets thereof in the event of a proposed sale, transfer or assignment.

(2) The franchisor gives written notice of its exercise of the right of first refusal no later than 45 days after the franchisor receives all of the information required pursuant to subparagraph (A) of paragraph (2) of subdivision (d).

(3) The sale, transfer, or assignment being proposed relates to not less than all or substantially all of the assets of the franchised business or to a controlling interest in the franchised business.

(4) The proposed transferee is neither a family member of an owner of the franchised business, nor a managerial employee of the franchisee owning 15 percent or more of the franchised business, nor a corporation, partnership, or other legal entity owned by the existing owners of the franchised business. For purposes of this paragraph, a "family member" means the spouse of an owner of the franchised business, the child, grandchild, brother, sister, or parent of an owner, or a spouse of one of those family members. Nothing contained in this paragraph limits the rights of the franchisor to disapprove a proposed transferee as provided in subdivision (d).

(5) Upon the franchisor's exercise of the right of first refusal, the consideration paid by the franchisor to the franchisee and owners of the franchised business shall equal or exceed all consideration that each of them were to have received under the terms of, or in connection with, the proposed sale, assignment, or transfer, and the franchisor shall comply with all the terms and conditions of the agreement or agreements to sell, transfer, or assign the franchised business.

(6) The franchisor shall reimburse the proposed transferee for any expenses paid or incurred by the proposed transferee in evaluating, investigating, and negotiating the proposed transfer to the extent those expenses do not exceed the usual, customary, and reasonable fees charged for similar work done in the area in which the franchised

business is located. These expenses include, but are not limited to, legal and accounting expenses, and expenses incurred for title reports and environmental or other investigations of any real property on which the franchisee's operations are conducted. The proposed transferee shall provide the franchisor a written itemization of those expenses, and a copy of all nonprivileged reports and studies for which expenses were incurred, if any, within 30 days of the proposed transferee's receipt of a written request from the franchisor for that accounting. The franchisor shall make payment within 30 days of exercising the right of first refusal.

(u) To unfairly discriminate in favor of any dealership owned or controlled, in whole or part, by a manufacturer or distributor or an entity that controls or is controlled by the manufacturer or distributor. Nothing in this subdivision shall be interpreted to prohibit a franchisor from granting a franchise to prospective franchisees or assisting those franchisees during the course of the franchise relationship as part of a program or programs to make franchises available to persons lacking capital, training, business experience, or other qualifications ordinarily required of prospective franchisees.

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 663

An act to add Section 2889.3 to the Public Utilities Code, relating to public utilities.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 2889.3 is added to the Public Utilities Code, to read:

2889.3. (a) (1) Before a telephone corporation exits the business of providing interexchange services to all of its customers or to an

entire class of its customers, the telephone corporation or any person, firm, or corporation representing the telephone corporation, shall provide those affected customers with a written notice at least 30 days prior to the proposed transfer of those customers to another telephone corporation. The notice shall include all of the following:

(A) A straightforward description of the proposed transfer.

(B) All applicable rates, terms, and conditions of the new service.

(C) A statement of the customer's right to transfer to another telephone corporation.

(D) A toll-free customer service telephone number for the purpose of responding to customers' questions.

(2) Any transfer of customer services shall be effectuated without charge.

(b) Subdivision (a) does not apply when the telephone corporation has entered into a written contract with the customer and when the change in telephone corporation results in no rate increase for the customer.

CHAPTER 664

An act to add Division 2 (commencing with Section 64000) to Title 6.7 of the Government Code, relating to the Transportation Finance Bank, and making an appropriation therefor.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Division 2 (commencing with Section 64000) is added to Title 6.7 of the Government Code, to read:

DIVISION 2. TRANSPORTATION FINANCE BANK

64000. (a) (1) The California Transportation Commission may allocate federal and state transportation funds to the Department of Transportation, consistent with all applicable state and federal laws governing the use of those funds, for an enforceable commitment to the California Economic Development Financing Authority for implementing the purposes of the Transportation Finance Bank created pursuant to the authority set forth in the memorandum of agreement entered into by the commission, the department, and the authority, dated May 1, 1996, and amended on July 29, 1996. The commission shall allocate funds from the State Highway Account in the State Transportation Fund and other available funds under the jurisdiction of the commission to the department to be used to meet

capital and interest obligations created by the Transportation Finance Bank as those obligations arise or become due.

(2) No funding guarantees for new programs may be made by the commission under this section after the expiration date of the federal demonstration program provided for in Section 1511 of Public Law 105-178.

(3) The commission may allocate state transportation improvement program funds to provide funding guarantees for loans and other instruments of credit if the State Infrastructure Bank program was authorized under Section 350 of Public Law 104-59 to make these loans and instruments of credit.

(b) An allocation of funds by the commission to meet capital and interest obligations created by the Transportation Finance Bank shall be construed as an expenditure in the county or counties where the project is located and an amount equivalent to the allocation shall be deducted from the amount of funds available to the affected county or counties in the ensuing fund estimate prepared pursuant to Sections 14524 and 14525.

(c) Any project requesting funds or funding guarantees under this section shall first receive approval of the project from the applicable county transportation commission where the project is located prior to the receipt of any funding guarantee or funding.

(d) Notwithstanding any other provision of law, the amount of funds needed to meet capital and interest obligations created by the Transportation Finance Bank with respect to those projects shall not exceed the total amount programmed for each county in the previous transportation improvement program.

(e) Only projects that have a dedicated revenue source and are eligible for assistance under Section 1511 of Public Law 105-178 are entitled to funding or guarantees under this section.

CHAPTER 665

An act to amend Section 18179 of the Education Code, and to amend Section 18816 of the Revenue and Taxation Code, relating to schools.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 18179 of the Education Code is amended to read:

18179. This article shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2004, deletes or extends that date.

SEC. 2. Section 18816 of the Revenue and Taxation Code is amended to read:

18816. (a) This article shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2004, deletes or extends that date.

(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), or the adjusted amount specified in subdivision (c), as may be applicable, then this article is repealed with respect to taxable years beginning on and after January 1 of that calendar year. The Franchise Tax Board shall estimate the annual contribution amount by September 1 of each year using the actual amounts known to be contributed and an estimate of the remaining year's contributions.

(c) For each calendar year, beginning with calendar year 1994, 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.

CHAPTER 666

An act to amend Sections 1596.866, 1797.113, and 1797.191 of the Health and Safety Code, relating to child care, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 1596.866 of the Health and Safety Code is amended to read:

1596.866. (a) (1) In addition to any other required training, at least one director or teacher at each day care center, and each family day care home licensee who provides care, shall have at least 15 hours of health and safety training.

(2) The training shall include the following components:

(A) Pediatric first aid.

(B) Pediatric cardiopulmonary resuscitation (CPR).

(C) A preventative health practices course or courses that include instruction in the recognition, management, and prevention of infectious diseases, including immunizations, and prevention of childhood injuries.

(3) The training may include instruction in sanitary food handling, child nutrition, emergency preparedness and evacuation, caring for children with special needs, and identification and reporting of signs and symptoms of child abuse.

(b) Day care center directors and licensees of large family day care homes shall ensure that at least one staff member who has a current course completion card in pediatric first aid and pediatric CPR issued either by the American Red Cross or the American Heart Association, or by a training program that has been approved by the Emergency Medical Services Authority pursuant to this section and Section 1797.191, shall be onsite at all times when children are present at the facility, and shall be present with the children when children are offsite from the facility for facility activities. Nothing in this subdivision shall be construed to require, in the event of an emergency, additional staff members, who are onsite when children are present at the facility, to have a current course completion card in pediatric first aid and pediatric CPR.

(c) (1) The completion of health and safety training by all personnel and licensees described in subdivision (a) shall be a condition of licensure.

(2) Training in pediatric first aid and pediatric CPR by persons described in subdivisions (a) and (b) shall be current at all times. Training in preventive health practices as described in subparagraph (C) of paragraph (2) of subdivision (a) is a one-time-only requirement for persons described in subdivision (a).

(3) The department shall issue a provisional license for otherwise qualified applicants who are not in compliance with this section. This provisional license shall expire 90 days after the date of issuance and shall not be extended.

(4) A notice of deficiency shall be issued by the department at the time of a site visit to any licensee who is not in compliance with this section. The licensee shall, at the time the notice is issued, develop a plan of correction to correct the deficiency within 90 days of

receiving the notice. The facility's license may be revoked if it fails to correct the deficiency within the 90-day period. Section 1596.890 shall not apply to this paragraph.

(d) Completion of the training required pursuant to subdivisions (a) and (b) shall be demonstrated, upon request of the licensing agency, by the following:

(1) Current pediatric first aid and pediatric CPR course completion cards issued either by the American Red Cross or the American Heart Association, or by a training program approved by the Emergency Medical Services Authority pursuant to Section 1797.191.

(2) (A) A course completion card for a preventive health practices course or courses as described in subparagraph (C) of paragraph (2) of subdivision (a) issued by a training program approved by the Emergency Medical Services Authority pursuant to Section 1797.191.

(B) Persons who, prior to the date on which the amendments to this section enacted in 1998 become operative, have completed a course or courses in preventive health practices as described in subparagraph (C) of paragraph (2) of subdivision (a), and have a certificate of completion of a course or courses in preventive health practices, or certified copies of transcripts that identify the number of hours and the specific course or courses taken for training in preventive health practices, shall be deemed to have met the training in preventive health practices.

(3) In addition to training programs specified in paragraphs (1) and (2), training programs or courses in pediatric first aid, pediatric CPR, and preventive health practices offered or approved by an accredited college or university are considered to be approved sources of training that may be used to satisfy the training requirements of paragraph (2) of subdivision (a). Completion of this training shall be demonstrated to the licensing agency by a certificate of course completion, course completion cards, or certified copies of transcripts that identify the number of hours and the specified course or courses taken for the training as defined in paragraph (2) of subdivision (a).

(e) The training required under subdivision (a) shall not be provided by a home study course. This training may be provided through in-service training, workshops, or classes.

(f) All personnel and licensees described in subdivisions (a) and (b) shall maintain current course completion cards for pediatric first aid and pediatric CPR issued either by the American Red Cross or the American Heart Association, or by a training program approved by the Emergency Medical Services Authority pursuant to Section 1797.191, or shall have current certification in pediatric first aid and pediatric CPR from an accredited college or university in accordance with paragraph (3) of subdivision (d).

(g) The department shall have the authority to grant exceptions to the requirements imposed by this section in order to meet the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.).

(h) The department shall adopt regulations to implement this section.

SEC. 2. Section 1797.113 of the Health and Safety Code is amended to read:

1797.113. The Emergency Medical Services Training Program Approval Fund is hereby established in the State Treasury and, notwithstanding Section 13340 of the Government Code, is continuously appropriated to the authority for the authority's training program review and approval activities. The fees charged by the authority under Section 1797.191 shall be deposited in this fund. The authority may transfer unexpended and unencumbered moneys contained in the Emergency Medical Services Training Program Approval Fund to the Surplus Money Investment Fund for investment pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code. All interest, dividends, and pecuniary gains from these investments or deposits shall accrue to the Emergency Medical Services Training Program Approval Fund.

SEC. 3. Section 1797.191 of the Health and Safety Code is amended to read:

1797.191. (a) The authority shall establish minimum standards for the training in pediatric first aid, pediatric cardiopulmonary resuscitation (CPR), and preventive health practices required by Section 1596.866.

(b) (1) The authority shall establish a process for the ongoing review and approval of training programs in pediatric first aid, pediatric CPR, and preventive health practices as specified in paragraph (2) of subdivision (a) of Section 1596.866 to ensure that those programs meet the minimum standards established pursuant to subdivision (a). The authority shall charge fees equal to its costs incurred for the pediatric first aid and CPR training standards program and for the ongoing review and approval of these programs.

(2) The authority shall establish, in consultation with experts in pediatric first aid, pediatric CPR, and preventive health practices, a process to ensure the quality of the training programs, including, but not limited to, a method for assessing the appropriateness of the courses and the qualifications of the instructors.

(c) (1) The authority may charge a fee equal to its costs incurred for the preventive health practices program and for the initial review and approval and renewal of approval of the program.

(2) If the authority chooses to establish a fee process based on the use of course completion cards for the preventive health practices program, the cost shall not exceed seven dollars ($7) per card for each training participant until January 1, 2001, at which time the

authority may evaluate its administrative costs. After evaluation of the costs, the authority may establish a new fee scale for the cards so that revenue does not exceed the costs of the ongoing review and approval of the preventive health practices training.

(d) For the purposes of this section, training programs mean programs that apply for approval by the authority to provide the training in pediatric first aid, pediatric CPR, or preventive health practices as specified in paragraph (2) of subdivision (a) of Section 1596.866. Training programs include all affiliated programs that also provide any of the authority-approved training required by this division. Affiliated programs are programs that are overseen by persons or organizations that have an authority-approved training program in pediatric first aid, pediatric CPR, or preventive health practices. Affiliated programs also include programs that have purchased an authority-approved training program in pediatric first aid, pediatric CPR, or preventive health practices. Training programs and their affiliated programs shall comply with the provisions of this division and with the regulations adopted by the authority pertaining to training programs in pediatric first aid, pediatric CPR, or preventive health practices.

(e) The director of the authority may, in accordance with regulations adopted by the authority, deny, suspend, or revoke any approval issued under this division or may place any approved program on probation, upon the finding by the director of the authority of an imminent threat to the public health and safety as evidenced by the occurrence of any of the actions listed in subdivision (f).

(f) Any of the following actions shall be considered evidence of a threat to the public health and safety, and may result in the denial, suspension, probation, or revocation of a program's approval or application for approval pursuant to this division.

(1) Fraud.

(2) Incompetence.

(3) The commission of any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, and duties of training program directors and instructors.

(4) Conviction of any crime that is substantially related to the qualifications, functions, and duties of training program directors and instructors. The record of conviction or a certified copy of the record shall be conclusive evidence of such conviction.

(5) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate, any provision of this division or the regulations promulgated by the authority pertaining to the review and approval of training programs in pediatric first aid, pediatric CPR, and preventive health practices as specified in paragraph (2) of subdivision (a) of Section 1596.866.

(g) In order to ensure that adequate qualified training programs are available to provide training in the preventive health practices

course to all persons who are required to have that training , the authority may, after approval of the Commission on Emergency Medical Services pursuant to Section 1799.50, establish temporary standards for training programs for use until permanent standards can be adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(h) Persons who, prior to the date on which the amendments to this section enacted in 1998 become operative, have completed a course or courses in preventive health practices as specified in subparagraph (C) of paragraph (2) of subdivision (a) of Section 1596.866, and have a certificate of completion card of a course or courses in preventive health practices, or certified copies of transcripts that identify the number of hours and the specific course or courses taken for training in preventive health practices shall be deemed to have met the requirement for training in preventive health practices.

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 meet the training requirements of this act standards must first be developed to ensure that the training received meets certain uniform health and safety standards in accordance with the mechanisms provided for by this act. In order for the standards to be developed and the training to be provided as soon as possible it is necessary that this act take effect immediately.

CHAPTER 667

An act to amend Section 18603 of the Health and Safety Code, relating to mobilehomes.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 18603 of the Health and Safety Code is amended to read:

18603. (a) In every park, there shall be a person available by telephonic or like means, including telephones, cellular phones, telephone answering machines, answering services or pagers, or in person who shall be responsible for, and who shall reasonably respond in a timely manner to emergencies concerning, the operation and maintenance of the park. In every park with 50 or more units, that person or his or her designee shall reside in the park and shall have knowledge of emergency procedures relative to utility

systems and common facilities under the ownership and control of the owner of the park.

(b) In every park, park management may adopt an emergency preparedness plan which shall include, but not be limited to, procedures and plans approved by the Standardized Emergency Management System Advisory Board on November 21, 1997, entitled "Emergency Plans for Mobilehome Parks," and compiled by the Office of Emergency Services in compliance with Governor's Executive Order W-156-97.

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 668

An act to amend Section 25102 of, to add Section 25208 to, and to add Division 3 (commencing with Section 28000) to Title 4 of, the Corporations Code, relating to capital access companies.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 25102 of the Corporations Code is amended to read:

25102. The following transactions are exempted from the provisions of Section 25110:

(a) Any offer (but not a sale) not involving any public offering and the execution and delivery of any agreement for the sale of securities pursuant to the offer if (1) the agreement contains substantially the following provision: "The sale of the securities that are the subject of this agreement has not been qualified with the Commissioner of Corporations of the State of California and the issuance of the securities or the payment or receipt of any part of the consideration therefor prior to the qualification is unlawful, unless the sale of securities is exempt from the qualification by Section 25100, 25102, or 25105 of the California Corporations Code. The rights of all parties to

this agreement are expressly conditioned upon the qualification being obtained, unless the sale is so exempt"; and (2) no part of the purchase price is paid or received and none of the securities are issued until the sale of the securities is qualified under this law unless the sale of securities is exempt from the qualification by this section, Section 25100, or 25105.

(b) Any offer (but not a sale) of a security for which a registration statement has been filed under the Securities Act of 1933 but has not yet become effective, or for which an offering statement under Regulation A has been filed but has not yet been qualified, if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under Section 8 of the act and no order under Section 25140 or subdivision (a) of Section 25143 is in effect under this law.

(c) Any offer (but not a sale) and the execution and delivery of any agreement for the sale of securities pursuant to the offer as may be permitted by the commissioner upon application. Any negotiating permit under this subdivision shall be conditioned to the effect that none of the securities may be issued and none of the consideration therefor may be received or accepted until the sale of the securities is qualified under this law.

(d) Any transaction or agreement between the issuer and an underwriter or among underwriters if the sale of the securities is qualified, or exempt from qualification, at the time of distribution thereof in this state, if any.

(e) Any offer or sale of any evidence of indebtedness, whether secured or unsecured, and any guarantee thereof, in a transaction not involving any public offering.

(f) Any offer or sale of any security in a transaction (other than an offer or sale to a pension or profit-sharing trust of the issuer) that meets each of the following criteria:

(1) Sales of the security are not made to more than 35 persons, including persons not in this state.

(2) All purchasers either have a preexisting personal or business relationship with the offeror or any of its partners, officers, directors or controlling persons, or managers (as appointed or elected by the members) if the offeror is a limited liability company, or by reason of their business or financial experience or the business or financial experience of their professional advisors who are unaffiliated with and who are not compensated by the issuer or any affiliate or selling agent of the issuer, directly or indirectly, could be reasonably assumed to have the capacity to protect their own interests in connection with the transaction.

(3) Each purchaser represents that the purchaser is purchasing for the purchaser's own account (or a trust account if the purchaser is a trustee) and not with a view to or for sale in connection with any distribution of the security.

(4) The offer and sale of the security is not accomplished by the publication of any advertisement. The number of purchasers referred to above is exclusive of any described in subdivision (i), any officer, director or affiliate of the issuer, or manager (as appointed or elected by the members) if the issuer is a limited liability company, and any other purchaser who the commissioner designates by rule. For purposes of this section, a husband and wife (together with any custodian or trustee acting for the account of their minor children) are counted as one person and a partnership, corporation or other organization that was not specifically formed for the purpose of purchasing the security offered in reliance upon this exemption, is counted as one person. The commissioner may by rule require the issuer to file a notice of transactions under this subdivision. However, the failure to file the notice or the failure to file the notice within the time specified by the rule of the commissioner shall not affect the availability of this exemption. An issuer who fails to file the notice as provided by rule of the commissioner shall, within 15 business days after demand by the commissioner, file the notice and pay to the commissioner a fee equal to the fee payable had the transaction been qualified under Section 25110.

(g) Any offer or sale of conditional sale agreements, equipment trust certificates, or certificates of interest or participation therein or partial assignments thereof, covering the purchase of railroad rolling stock or equipment or the purchase of motor vehicles, aircraft, or parts thereof, in a transaction not involving any public offering.

(h) Any offer or sale of voting common stock by a corporation incorporated in any state if, immediately after the proposed sale and issuance, there will be only one class of stock of the corporation outstanding that is owned beneficially by no more than 35 persons, provided all of the following requirements have been met:

(1) The offer and sale of the stock is not accompanied by the publication of any advertisement, and no selling expenses have been given, paid, or incurred in connection therewith.

(2) The consideration to be received by the issuer for the stock to be issued shall consist of (i) only assets (which may include cash) of an existing business enterprise transferred to the issuer upon its initial organization, of which all of the persons who are to receive the stock to be issued pursuant to this exemption were owners during, and the enterprise was operated for, a period of not less than one year immediately preceding the proposed issuance, and the ownership of the enterprise immediately prior to the proposed issuance was in the same proportions as the shares of stock are to be issued, or (ii) only cash or cancellation of indebtedness for money borrowed or both upon the initial organization of the issuer, provided all of the stock is issued for the same price per share, or (iii) only cash, provided the sale is approved in writing by each of the existing shareholders and the purchaser or purchasers are existing shareholders, or (iv), in a

case where after the proposed issuance there will be only one owner of the stock of the issuer, any legal consideration.

(3) No promotional consideration has been given, paid, or incurred in connection with the issuance. Promotional consideration means any consideration paid directly or indirectly to a person who, acting alone or in conjunction with one or more other persons, takes the initiative in founding and organizing the business or enterprise of an issuer, for services rendered in connection with the founding or organizing.

(4) A notice in a form prescribed by rule of the commissioner, signed by an active member of the State Bar of California, shall be filed with or mailed for filing to the commissioner not later than 10 business days after receipt of consideration for the securities by the issuer, which notice shall contain an opinion of the member of the State Bar of California that the exemption provided by this subdivision is available for the offer and sale of the securities. However, the failure to file the notice as required by this subdivision and the rules of the commissioner shall not affect the availability of this exemption. An issuer who fails to file the notice within the time specified by this subdivision shall, within 15 business days after demand by the commissioner, file the notice and pay to the commissioner a fee equal to the fee payable had the transaction been qualified under Section 25110. The notice, except when filed on behalf of a California corporation, shall be accompanied by an irrevocable consent, in the form that the commissioner by rule prescribes, appointing the commissioner or his or her successor in office to be the issuer's attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against it or its successor that arises under this law or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the issuer. An issuer on whose behalf a consent has been filed in connection with a previous qualification or exemption from qualification under this law (or application for a permit under any prior law if the application or notice under this law states that the consent is still effective) need not file another. Service may be made by leaving a copy of the process in the office of the commissioner but it is not effective unless (1) the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by him or her, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at its last address on file with the commissioner, and (2) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within the further time as the court allows.

(5) Each purchaser represents that the purchaser is purchasing for the purchaser's own account, or a trust account if the purchaser is a trustee, and not with a view to or for sale in connection with any distribution of the stock.

For the purposes of this subdivision, all securities held by a husband and wife, whether or not jointly, shall be considered to be owned by one person, and all securities held by a corporation that has issued stock pursuant to this exemption shall be considered to be held by the shareholders to whom it has issued the stock.

All stock issued by a corporation pursuant to this subdivision as it existed prior to the effective date of the amendments to this section made during the 1996 portion of the 1995–96 Regular Session that required the issuer to have stamped or printed prominently on the face of the stock certificate a legend in a form prescribed by rule of the commissioner restricting transfer of the stock in a manner provided for by that rule shall not be subject to the transfer restriction legend requirement and, by operation of law, the corporation is authorized to remove that transfer restriction legend from the certificates of those shares of stock issued by the corporation pursuant to this subdivision as it existed prior to the effective date of the amendments to this section made during the 1996 portion of the 1995–96 Regular Session.

(i) Any offer or sale (1) to a bank, savings and loan association, trust company, insurance company, investment company registered under the Investment Company Act of 1940, pension or profit-sharing trust (other than a pension or profit-sharing trust of the issuer, a self-employed individual retirement plan, or individual retirement account), or other institutional investor or governmental agency or instrumentality that the commissioner may designate by rule, whether the purchaser is acting for itself or as trustee, or (2) to any corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or any wholly owned subsidiary of such a corporation that after the offer and sale will own directly or indirectly 100 percent of the outstanding capital stock of the issuer; provided the purchaser represents that it is purchasing for its own account (or for the trust account) for investment and not with a view to or for sale in connection with any distribution of the security.

(j) Any offer or sale of any certificate of interest or participation in an oil or gas title or lease (including subsurface gas storage and payments out of production) if (1) all of the purchasers: (i) are and have been during the preceding two years engaged primarily in the business of drilling for, producing, or refining oil or gas (or whose corporate predecessor, in the case of a corporation, has been so engaged), or (ii) are persons described in clause (1) of subdivision (i) of this section, or (iii) have been found by the commissioner upon written application to be substantially engaged in the business of drilling for, producing, or refining oil or gas so as not to require the protection provided by this law (which finding shall be effective until rescinded), or (2) the security is concurrently hypothecated to a bank in the ordinary course of business to secure a loan made by the bank; provided each purchaser represents that it is purchasing for its

own account for investment and not with a view to or for sale in connection with any distribution of the security.

(k) Any offer or sale of any security under, or pursuant to, a plan of reorganization under Chapter 11 of the federal bankruptcy law that has been confirmed or is subject to confirmation by the decree or order of a court of competent jurisdiction.

(*l*) Any offer or sale of an option, warrant, put, call, or straddle, and any guarantee of any of these securities, by a person who is not the issuer of the security subject to the right, if the transaction, had it involved an offer or sale of the security subject to the right by the person, would not have violated Section 25110 or 25130.

(m) Any offer or sale of a stock to a pension, profit-sharing, stock bonus or employee stock ownership plan provided that (1) the plan meets the requirements for qualification under Section 401 of the Internal Revenue Code, and (2) the employees are not required or permitted individually to make any contributions to the plan. The exemption provided by this subdivision shall not be affected by whether the stock is contributed to the plan, purchased from the issuer with contributions by the issuer or an affiliate of the issuer, or purchased from the issuer with funds borrowed from the issuer, an affiliate of the issuer or any other lender.

(n) Any offer or sale of any security in a transaction, other than an offer or sale of a security in a rollup transaction, that meets all of the following criteria:

(1) The issuer is (A) a California corporation or foreign corporation that, at the time of the filing of the notice required under this subdivision, is subject to Section 2115, or (B) any other form of business entity, including without limitation a partnership or trust organized under the laws of this state. The exemption provided by this subdivision is not available to a "blind pool" issuer, as that term is defined by the commissioner, or to an investment company subject to the Investment Company Act of 1940.

(2) Sales of securities are made only to qualified purchasers or other persons the issuer reasonably believes, after reasonable inquiry, to be qualified purchasers. A corporation, partnership, or other organization specifically formed for the purpose of acquiring the securities offered by the issuer in reliance upon this exemption may be a qualified purchaser if each of the equity owners of the corporation, partnership, or other organization is a qualified purchaser. Qualified purchasers include the following:

(A) A person designated in Section 260.102.13 of Title 10 of the California Code of Regulations.

(B) A person designated in subdivision (i) or any rule of the commissioner adopted thereunder.

(C) A pension or profit-sharing trust of the issuer, a self-employed individual retirement plan, or an individual retirement account, if the investment decisions made on behalf of the trust, plan, or account are made solely by persons who are qualified purchasers.

(D) An organization described in Section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, each with total assets in excess of five million dollars ($5,000,000) according to its most recent audited financial statements.

(E) With respect to the offer and sale of one class of voting common stock of an issuer or of preferred stock of an issuer entitling the holder thereof to at least the same voting rights as the issuer's one class of voting common stock, provided that the issuer has only one-class voting common stock outstanding upon consummation of the offer and sale, a natural person who, either individually or jointly with the person's spouse, (i) has a minimum net worth of two hundred fifty thousand dollars ($250,000) and had, during the immediately preceding tax year, gross income in excess of one hundred thousand dollars ($100,000) and reasonably expects gross income in excess of one hundred thousand dollars ($100,000) during the current tax year or (ii) has a minimum net worth of five hundred thousand dollars ($500,000). "Net worth" shall be determined exclusive of home, home furnishings, and automobiles. Other assets included in the computation of net worth may be valued at fair market value.

Each natural person specified above, by reason of his or her business or financial experience, or the business or financial experience of his or her professional advisor, who is unaffiliated with and who is not compensated, directly or indirectly, by the issuer or any affiliate or selling agent of the issuer, can be reasonably assumed to have the capacity to protect his or her interests in connection with the transaction. The amount of the investment of each natural person shall not exceed 10 percent of the net worth, as determined by this subparagraph, of that natural person.

(F) Any other purchaser designated as qualified by rule of the commissioner.

(3) Each purchaser represents that the purchaser is purchasing for the purchaser's own account (or trust account, if the purchaser is a trustee) and not with a view to or for sale in connection with a distribution of the security.

(4) Each natural person purchaser, including a corporation, partnership, or other organization specifically formed by natural persons for the purpose of acquiring the securities offered by the issuer, receives, at least five business days before securities are sold to, or a commitment to purchase is accepted from, the purchaser, a written offering disclosure statement that shall meet the disclosure requirements of Regulation D (17 C.F.R. 230.501 et seq.), and any other information as may be prescribed by rule of the commissioner; provided that the issuer shall not be obligated pursuant to this paragraph to provide this disclosure statement to a natural person qualified under Section 260.102.13 of Title 10 of the California Code of Regulations. The offer or sale of securities pursuant to a disclosure

statement required by this paragraph in violation of Section 25401, or that fails to meet the disclosure requirements of Regulation D (17 C.F.R. 230.501 et seq.), shall not render unavailable to the issuer the claim of an exemption from Section 25110 afforded by this subdivision. This paragraph does not impose, directly or indirectly, any additional disclosure obligation with respect to any other exemption from qualification available under any other provision of this section.

(5) (A) A general announcement of proposed offering may be published by written document only, provided that the general announcement of proposed offering sets forth the following required information:

(i) The name of the issuer of the securities.

(ii) The full title of the security to be issued.

(iii) The anticipated suitability standards for prospective purchasers.

(iv) A statement that (I) no money or other consideration is being solicited or will be accepted, (II) an indication of interest made by a prospective purchaser involves no obligation or commitment of any kind, and, if the issuer is required by paragraph (4) to deliver a disclosure statement to prospective purchasers, (III) no sales will be made or commitment to purchase accepted until five business days after delivery of a disclosure statement and subscription information to the prospective purchaser in accordance with the requirements of this subdivision.

(v) Any other information required by rule of the commissioner.

(vi) The following legend: "For more complete information about (Name of Issuer) and (Full Title of Security), send for additional information from (Name and Address) by sending this coupon or calling (Telephone Number)."

(B) The general announcement of proposed offering referred to in subparagraph (A) may also set forth the following information:

(i) A brief description of the business of the issuer.

(ii) The geographic location of the issuer and its business.

(iii) The price of the security to be issued, or, if the price is not known, the method of its determination or the probable price range as specified by the issuer, and the aggregate offering price.

(C) The general announcement of proposed offering shall contain only the information that is set forth in this paragraph.

(D) Dissemination of the general announcement of proposed offering to persons who are not qualified purchasers, without more, shall not disqualify the issuer from claiming the exemption under this subdivision.

(6) No telephone solicitation shall be permitted until the issuer has determined that the prospective purchaser to be solicited is a qualified purchaser.

(7) The issuer files a notice of transaction under this subdivision both (A) concurrent with the publication of a general announcement

of proposed offering or at the time of the initial offer of the securities, whichever occurs first, accompanied by a filing fee, and (B) within 10 business days following the close or abandonment of the offering, but in no case more than 210 days from the date of filing the first notice. The first notice of transaction under subparagraph (A) shall contain an undertaking, in a form acceptable to the commissioner, to deliver any disclosure statement required by paragraph (4) to be delivered to prospective purchasers, and any supplement thereto, to the commissioner within 10 days of the commissioner's request for the information. The exemption from qualification afforded by this subdivision is unavailable if an issuer fails to file the first notice required under subparagraph (A) or to pay the filing fee. The commissioner has the authority to assess an administrative penalty of up to one thousand dollars ($1,000) against an issuer that fails to deliver the disclosure statement required to be delivered to the commissioner upon the commissioner's request within the time period set forth above. Neither the filing of the disclosure statement nor the failure by the commissioner to comment thereon precludes the commissioner from taking any action deemed necessary or appropriate under this division with respect to the offer and sale of the securities.

(o) An offer or sale of any security issued pursuant to a stock purchase plan or agreement, or issued pursuant to a stock option plan or agreement, where the security is exempt from registration under the Securities Act of 1933, as amended, pursuant to Rule 701 adopted pursuant to that act (17 C.F.R. 230.701), the provisions of which are hereby incorporated by reference into this section; provided that (1) the terms of any stock purchase plan or agreement shall comply with Sections 260.140.42, 260.140.45, and 260.140.46 of Title 10 of the California Code of Regulations, (2) the terms of any stock option plan or agreement shall comply with Sections 260.140.41, 260.140.45, and 260.140.46 of Title 10 of the California Code of Regulations, and (3) the issuer files a notice of transaction in accordance with rules adopted by the commissioner within 30 days after the initial issuance of any security under that plan, accompanied by a filing fee as prescribed by subdivision (y) of Section 25608.

(p) An offer or sale of nonredeemable securities to accredited investors (Section 28031) by a person licensed under the Capital Access Company Law (Division 3 (commencing with Section 28000) of Title 4). All nonredeemable securities shall be evidenced by certificates that shall have stamped or printed prominently on their face a legend in a form to be prescribed by rule or order of the commissioner restricting transfer of the securities in the manner as the rule or order provides.

SEC. 2. Section 25208 is added to the Corporations Code, to read:

25208. A person licensed as a capital access company under Division 3 (commencing with Section 28000) of Title 4 is exempt from the provisions of Section 25210 when engaged in the transaction

of business pursuant to the requirements of the Capital Access Company Law and the regulations promulgated thereunder.

SEC. 3. Division 3 (commencing with Section 28000) is added to Title 4 of the Corporations Code, to read:

DIVISION 3. CAPITAL ACCESS COMPANIES

CHAPTER 1. GENERAL PROVISIONS

Article 1. Short Title and Construction

28000. This division shall be known and may be cited as the "Capital Access Company Law."

28001. This division shall be liberally construed to accomplish its purposes.

28002. The provisions of the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4) shall apply to licensees.

28003. The Legislature finds all of the following:

(a) It is necessary to increase job opportunities in the state.

(b) Promoting the establishment, growth, and expansion of small business firms in this state is an efficient way to increase job opportunities in the state.

(c) Small business firms are unable to grow and create job opportunities unless they have access to risk capital.

(d) Congress has exempted from the provisions of the federal Investment Company Act of 1940, certain companies that are not in the business of issuing redeemable securities, the operations of which are subject to state regulation governing entities that provide financial or managerial assistance to enterprises doing business, or proposing to do business, in that state.

(e) Therefore, in order for the state to obtain the full benefits of that exemption, it is necessary that the state provide for the licensure and regulation of capital access companies, to permit these companies to operate pursuant to the exemption from regulation under the federal Investment Company Act of 1940.

28004. (a) The purpose of this division is to provide for the licensure and regulation of capital access companies that will provide risk capital and management assistance, primarily to small business firms in the state, to enable those companies to operate pursuant to the exemption from regulation under the federal Investment Company Act of 1940.

(b) The purpose of this division as set forth in subdivision (a) constitutes the standard that the commissioner shall observe in administering the provisions of this division.

Article 2. Definitions

28030. Subject to additional definitions contained in this division which are applicable to specific provisions of this division, and unless the context otherwise requires, the definitions in this article apply throughout this division.

28031. "Accredited investor" means a person who is defined in Section 2(a)(15) of the Securities Act of 1933, or any other person that the Securities and Exchange Commission may so designate by rule, regulation, or order, who, by purchasing the securities of a licensee, provides the investment funds with which the licensee will provide financial assistance to small business firms.

28032. "Affiliate" means any person or persons controlling, controlled by, or under common control with, other specified persons.

28033. "Commissioner" means the Commissioner of Corporations or his or her designee with respect to a particular matter.

28034. "Company" means a corporation, limited partnership, limited liability company, or other form of business entity, which is organized under the laws of the State of California.

28035. "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a specified person.

28036. "Controlling person," when used with respect to a specified person, means any person who controls the specified person, directly or indirectly, through one or more intermediaries.

28037. "Insolvent," when used with respect to any person, means a person who has ceased to pay his or her debts in the ordinary course of business, who cannot pay his or her debts as they become due, or whose liabilities exceed his or her assets.

28038. "License" means a license issued under this division authorizing a licensee to transact business as a capital access company.

28039. "Licensee" means a company that is licensed under this division.

28040. "Officer" means either of the following:

(a) When used with respect to a corporation, any person appointed or designated as an officer of the corporation by or pursuant to applicable law or the articles of incorporation or bylaws of the corporation or any person who performs with respect to the corporation functions usually performed by an officer of a corporation.

(b) When used with respect to a specified person other than a natural person or a corporation, any person who performs with respect to the specified person functions usually performed by an officer of a corporation with respect to the corporation.

28041. "Order" means any approval, consent, authorization, exemption, denial, prohibition, or requirement applicable to a specific case issued by the commissioner. "Order" includes any condition of a license and any agreement made by any person with the commissioner under this division.

28042. "Parent," when used with respect to a specified person other than a natural person, means any person other than a natural person that controls the specified person, directly or indirectly, through one or more intermediaries.

28043. "Person" means any natural person, proprietorship, joint venture, partnership, trust, business trust, syndicate, association, joint stock company, corporation, limited liability company, government, agency of any government, or any other organization. However, "person," when used with respect to acquiring control of or controlling a specified person, includes any combination of two or more persons acting in concert.

28044. "Principal security holder," means any person who owns, directly or indirectly, of record or beneficially, securities representing 10 percent or more of the voting power of the issuer of those securities.

28045. "To provide financing assistance to a person" means to purchase securities issued by the person, either directly from the person, or indirectly through a securities underwriter.

28046. "Security" has the meaning set forth in Section 25019.

28047. "Small business firm" means a person that: (a) proposes to transact, or transacts, business on a regular and continuous basis in California; (b) has fewer than 500 employees; (c) is (1) a California corporation, (2) a foreign corporation, which is either (A) subject to Section 2115 without regard to the filing requirement under Section 2108 or (B) not subject to Section 2115, but by applying the three-factor test set forth in subdivision (a) of Section 2115, has an average property factor, payroll factor, and sales factor of not less than 25 percent during the latest full income year, provided that the payroll factor for the same period is at least 50 percent, and has a percentage of outstanding voting securities held of record, as of the last record date for a shareholder's meeting, by persons having addresses in this state of at least 25 percent, or (3) a limited partnership, limited liability company, or other form of business entity organized under the laws of the State of California; (d) is not an investment company subject to the Investment Company Act of 1940; and (e) is not a person that either (1) has no specific business plan or purpose or (2) has indicated that its business plan is to engage in mergers or acquisitions with unidentified companies or other entities.

28048. "Subsidiary," when used with respect to a specified person other than a natural person, means any person other than a natural person controlled by the specified person, directly or indirectly, through one or more intermediaries.

28049. "Voting power" has the meaning set forth in Section 194.5.

CHAPTER 2. ADMINISTRATION

28100. The commissioner shall administer and enforce the provisions of this division.

28101. Whenever the commissioner issues an order or license under this division, the commissioner may impose any conditions that are in his or her opinion necessary to carry out the provisions and purposes of this division.

28102. Any application filed with the commissioner under this division or under any regulation or order issued under this division shall be in a form, shall contain information, shall be signed in a manner, and shall be verified in a manner, that the commissioner may by regulation or order require.

28103. In determining whether to approve any application filed under this division or under any regulation or order issued under this division, the commissioner may consider proposals made by the applicant, including, but not limited to, proposals to appoint officers, sell securities, obtain financing, or purchase securities of small business firms, and, if in the opinion of the commissioner it is probable that the applicant will be able to implement the proposal, the commissioner may make findings on the basis of the proposal. However, whenever the commissioner approves an application on the basis, in whole or in part, of a proposal made by the applicant, the commissioner shall impose upon the approval appropriate conditions requiring that the applicant implement the proposal within a period of time specified by the commissioner.

28104. (a) The commissioner may do both of the following:

(1) Make public or private investigations within or outside this state that he or she deems necessary to determine whether to approve any application filed under this division or under any regulation or order issued under this division, to determine whether any person has violated or may violate any provision of this division or of any regulation or order issued under this division, to aid in the enforcement of any provision of this division or of any regulation or order issued under this division, or to aid in the issuing of regulations or orders under this division.

(2) Publish information concerning any violation of any provision of this division or of any regulation or order issued under this division.

(b) For purposes of any investigation, examination, or other proceeding under this division, the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records that the commissioner deems relevant or material to the inquiry.

(c) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the superior court, upon application by the commissioner, may issue to the person an order requiring him or her to appear before the commissioner, and to produce documentary evidence, if so ordered, or to give evidence relevant to the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt.

28105. The commissioner may provide information relating to a licensee or any parent or subsidiary of the licensee to, or receive information relating to a licensee or any parent or subsidiary of the licensee from, any governmental agency.

28106. If the commissioner permits any licensee, any affiliate of the licensee, or any governmental agency to inspect or make copies of any record relating to the licensee or to any director, officer, employee, or affiliate of the licensee, or if the commissioner provides the record, or a copy thereof, to any of those persons, Sections 6254 and 6255 of the Government Code shall continue to apply to the record to the extent that these sections applied to the record prior to that action by the commissioner.

28107. The commissioner may refer any evidence available concerning any violation of this division or of any regulation or order issued under this division that constitutes a crime to the district attorney of the county in which the violation occurred, who may, with or without that reference, institute appropriate criminal proceedings.

28108. Before any applicant for a license is issued a license, the applicant and each parent and subsidiary of the applicant shall file, and each person that becomes a parent or subsidiary of a licensee shall file, not less than 30 days after becoming a parent or subsidiary of the licensee, with the commissioner, in the form the commissioner may by regulation or order require, an irrevocable consent appointing the commissioner to be the person's attorney-in-fact to receive service of any lawful process in any noncriminal judicial or administrative proceeding against the person, or the person's successor, executor, or administrator, which arises under this division or under any regulation or order issued under this division after the consent has been filed, with the same force and validity as if served personally on the person. Service may be made by leaving a copy of the process at any office of the commissioner, but the service is not effective unless (a) the party making the service, who may be the commissioner, forthwith sends notice of the service and a copy of the process by registered or certified mail to the person served at the person's last address on file with the commissioner, and (b) an affidavit of compliance with this section by the party making service is filed on or before the return date, if any, or within that further time as the court, in the case of a judicial proceeding, or the administrative agency, in the case of an administrative proceeding, allows.

28109. Whenever any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this division or by any regulation or order issued under this division, whether or not the person has filed a consent to service of process under Section 28108, and if personal jurisdiction over the person cannot otherwise be obtained in this state, that conduct shall be considered equivalent to the person's appointment of the commissioner to be the person's attorney-in-fact to receive service of any lawful process in any noncriminal judicial or administrative proceeding against the person or the person's successor, executor, or administrator, which grows out of that conduct and which is brought under this division or under any regulation or order issued under this division, with the same force and validity as if served on the person personally. Service may be made by leaving a copy of the process in any office of the commissioner, but the service is not effective unless (a) the party making the service, who may be the commissioner, forthwith sends notice of the service and a copy of the process by registered or certified mail to the person served at the person's last known address or takes other steps which are reasonably calculated to give actual notice, and (b) an affidavit of compliance with this section by the party making service is filed in the case on or before the return date, if any, or within that further time as the court, in the case of a judicial proceeding, or the administrative agency, in the case of an administrative proceeding, allows.

28110. (a) Fees shall be paid to, and collected by, the commissioner, as follows:

(1) The fee for filing with the commissioner an application for a license shall be no greater than two thousand dollars ($2,000).

(2) The fee for filing with the commissioner an application for approval to acquire control of a licensee shall be no greater than one thousand dollars ($1,000).

(3) The fee for filing with the commissioner an application for approval for a licensee to merge with another company, an application for approval for a licensee to purchase all or substantially all of the business of another person, or an application for approval for a licensee to sell all or substantially all of its business or of the business of any of its offices to another licensee, shall be no greater than one thousand dollars ($1,000). However, whenever two or more applications relating to the same merger, purchase, or sale are filed with the commissioner, the fee for filing each application shall be the quotient determined by dividing one thousand dollars ($1,000) by the number of the applications.

(4) Whenever the commissioner examines, audits, or investigates any licensee or any affiliate of a licensee, that licensee shall pay, within 10 days after receipt of a statement from the commissioner, a fee that equals the amount of the salary or other compensation paid to the persons making the examination, audit, or investigation plus the amount of expenses, including overhead, reasonably incurred in

the performance of the work. The licensee shall be given a preliminary estimate of the fee before the commissioner commences an examination, audit, or investigation. In determining the costs associated with an examination, audit, or investigation, the commissioner may use the estimated average hourly cost for all departmental persons performing examinations, audits, or investigations for the fiscal year.

(b) (1) Each fee for filing an application with the commissioner shall be paid at the time the application is filed with the commissioner.

(2) No fee for filing an application with the commissioner shall be refundable, regardless of whether the application is approved, denied, withdrawn, or abandoned.

(c) All fees charged and collected under this section shall be transmitted to the Treasurer at least weekly, accompanied by a detailed statement therefor, and shall be credited to the State Corporations Fund.

CHAPTER 3. LICENSING

28150. (a) Except as provided in subdivision (b), no person proposing to transact or transacting business in this state, other than a licensee, shall use any name or title that indicates that it is a capital access company or otherwise represent that it is a capital access company or that it is a licensee.

(b) Any company that proposes to apply for a license or that has applied for a license, may, before being issued a license, use a name or title that indicates that it is a capital access company if it meets all of the following requirements:

(1) The company appends to the name the designation "proposed," "in organization," or "in formation," or any similar designation that the commissioner may approve. The designation shall be set forth at least as conspicuously as the name or title.

(2) The company performs only those acts that may be necessary to (A) apply for and obtain the license and (B) prepare to commence transacting business as a licensee.

(3) The company does not represent that it is a licensee.

28151. No person other than a person who meets the definition of a licensee may be issued a license under this division.

28152. If the commissioner finds all of the following with respect to an application for a license, the commissioner shall approve the application:

(a) That the applicant has a tangible net worth, exclusive of the funds to invest under subdivision (b), in an amount that is not less than two hundred fifty thousand dollars ($250,000) and that the tangible net worth is adequate for the applicant to transact business as a capital access company.

(b) That the applicant has funds to invest in an amount that is not less than five million dollars ($5,000,000).

(c) That the applicant has, in addition to the requirements of subdivisions (a) and (b), financial resources in an amount that is adequate for the applicant to pay its expenses in transacting business as a capital access company for a period of not less than three years from the date of licensure.

(d) That the directors, officers, and controlling persons of the applicant are each of good character and sound financial standing, that the directors and officers of the applicant are each competent to perform their functions with respect to the applicant, and that the directors and officers of the applicant are collectively adequate to manage the business of the applicant as a capital access company. For purposes of this subdivision, the commissioner shall accord weight to the prior or current successful operation of a commercial or investment enterprise.

(e) That any person who makes recommendations with respect to the investment of funds of the company is an investment adviser, either registered under the Investment Adviser Act of 1940 or licensed as an investment adviser under the Corporate Securities Law of 1968, or exempt from registration or licensure, and that the person is not subject to any act or omission enumerated in subdivision (a), (e), (f), or (g) of Section 25212, or has been convicted of, or pled nolo contendere to, any offense or been held liable in any civil action specified in subdivision (b) of Section 25212, or is enjoined from any act, conduct, or practice specified in subdivision (c) of Section 25212, or is subject to any order specified in subdivision (d) of Section 25212.

(f) That it is reasonable to believe that the applicant, if licensed, will comply with the provisions of Section 6(a)(5) of the Investment Company Act of 1940, the applicable provisions of the Corporate Securities Law of 1968, this division, and of any regulation adopted or order issued under this division.

If, after notice and a hearing, the commissioner finds otherwise, the commissioner shall deny the application.

28153. (a) For purposes of Section 28152, the commissioner may find:

(1) That a director, officer, or controlling person of an applicant is not of good character if the director, officer, or controlling person or any director or officer of the controlling person has been convicted of, or has pleaded nolo contendere to, a crime involving fraud or dishonesty.

(2) That it is not reasonable to believe that an applicant, if licensed, will comply with all applicable provisions of this division and of any regulation or order issued under this division if the applicant has been convicted of, or has pleaded nolo contendere to, a crime involving fraud or dishonesty.

(b) Subdivision (a) shall not be deemed to be the only grounds upon which the commissioner may find, for purposes of Section

28152, that a director, officer, or controlling person of an applicant is not of good character or that it is not reasonable to believe that an applicant, if licensed, will comply with all applicable provisions of the Investment Company Act of 1940, the Corporate Securities Law of 1968, this division, and of any regulation or order issued under this division.

28154. No license shall be transferable or assignable.

28155. No licensee shall represent that it is sponsored, recommended, or approved by, or that its abilities or qualifications have in any respect been passed upon by, the commissioner. No licensee shall advertise, print, display, publish, distribute, or broadcast, or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast in any manner, any statement or representation with regard to the business subject to the provisions of this division that is false, misleading, or deceptive, or that omits material information that is necessary to make the statements not false, misleading, or deceptive, or in the case of a licensee, that refers to the supervision of business by the state or any department or official of the state. Nothing in this section shall be deemed to prohibit a licensee from stating that it is licensed if the effect of such license is not misrepresented.

CHAPTER 4. ORGANIZATIONAL MATTERS

Article 1. Organization and Name

28200. The organizational documents of the licensee shall include the following statement:

(a) The activities of the licensee are limited to the promotion of economic, business, or industrial development in the State of California through the provision of financial or managerial assistance primarily to small business firms and to other activities that are incidental or necessary to carry out that purpose.

(b) The licensee will not engage in the business of issuing redeemable securities.

(c) The security holders of the licensee are limited, on a class-by-class basis, to persons who reside in the State of California, or who have a substantial business presence in the State of California, and who hold not less than 80 percent of the licensee's securities.

(d) The securities of the licensee will be sold solely to accredited investors (Section 28031) and the licensee will not purchase any securities issued by an investment company as defined in Section 3 of the Investment Company Act of 1940 or issued by any company that would be an investment company except for the exclusions from that definition under paragraph (1) or (7) of Section 3(a) of that act, other than (1) any debt security that is rated investment grade by not less than one nationally recognized statistical rating organization or (2) any security issued by a registered open-end investment

company that is required by its investment policies to invest not less than 65 percent of its total assets in securities described in paragraph (1) or securities that are determined by that registered open-end investment company to be comparable in quality to securities described in paragraph (1).

(e) The licensee will engage in the transaction of business pursuant to the exemption from registration under the Investment Company Act of 1940 afforded to economic, business, and industrial development companies as provided for by Section 6(a)(5) of the Investment Company Act of 1940, as amended (15 U.S.C. Sec. 80a-6(a)), and a license pursuant to the Capital Access Company Law (Division 3 (commencing with Section 28000)).

(f) The investment of funds by the licensee will be limited by and subject to the provisions of Section 6(a)(5) of the Investment Company Act of 1940, the Corporate Securities Law of 1968, and the Capital Access Company Law.

28201. No licensee shall, except by prior written notice to the commissioner, transact business under any name other than its corporate name.

Article 2. Directors

28210. Each licensee shall have a board of directors, executive committee, or other policy body, which shall consist of not less than three members.

28211. The board of directors, executive committee, or other policy body of each licensee shall hold a meeting not less frequently than once each calendar year.

28212. The board of directors, executive committee, or other policy body of each licensee shall approve the contract to be entered into between the licensee and any person who will make recommendations with respect to the investment of funds of the licensee.

CHAPTER 5. OFFICES

Article 1. Establishing, Relocating, and Closing Offices

28320. (a) No licensee shall relocate its head office without prior written notice to the commissioner.

(b) No licensee shall establish, relocate, or close any office (other than its head office) unless it files a notice with the commissioner not less than two business days after taking the action.

CHAPTER 6. TRANSACTION OF BUSINESS

28400. No licensee shall engage in any business other than the following:

(a) The business of providing financing assistance through the purchase of securities of small business firms doing business or proposing to do business wholly or substantially in this state.

(b) The business of providing managerial assistance (including managerial and technical assistance) to small business firms doing business or proposing to do business wholly or substantially in this state.

28401. Each licensee shall use its best efforts to provide financing assistance to small business firms doing business or proposing to do business wholly or substantially in this state.

28402. (a) Except as provided in subdivision (b), no licensee shall provide financing assistance to any person other than a small business firm in this state.

(b) (1) If a licensee provides financing assistance to a small business firm in this state that is a franchisor, the licensee may also provide financing assistance to any small business firm in another state that is a franchisee of the franchisor.

(2) If a licensee provides financing assistance to a small business firm in this state that is a franchisee of a franchisor, the licensee may also provide financing assistance to any small business firm in another state that is a franchisee of the franchisor.

28403. Except as otherwise provided in subdivision (b) of Section 28402, no licensee shall provide financing assistance or management assistance for use primarily outside this state.

28404. (a) No licensee shall provide financing assistance to any small business firm the primary business of which is to provide financing assistance.

(b) No licensee shall provide financing assistance to any small business firm for the purpose of evading the requirements of this division.

28405. This section creates and authorizes an exempt class of persons pursuant to Section 1 of Article XV of the California Constitution. The restrictions upon rates of interest contained in Section 1 of Article XV of the California Constitution shall not apply to any evidence of indebtedness purchased by any licensee.

CHAPTER 7. RECORDS, REPORTS, AND EXAMINATIONS

28500. Each licensee shall make and keep books, accounts, and other records in the form and in the manner that the commissioner may by regulation or order require. All records so required shall be kept at the place and shall be preserved for the time that the commissioner may by regulation or order specify.

28501. Each licensee shall, not more than 90 days after the close of each of its fiscal years or within a longer period that the commissioner may by regulation or order specify, file with the commissioner an audit report containing all of the following:

(a) Financial statements (including balance sheets, statements of income or loss, statements of changes in capital accounts, and statements of changes in financial position or, in the case of a licensee that is a California nonprofit corporation, comparable financial statements) for, or as of, the end of the fiscal year, prepared, with audit, by an independent certified public accountant in accordance with generally accepted accounting principles.

(b) A report, certificate, or opinion of the independent certified public accountant or independent public accountant, stating that the financial statements were prepared in accordance with generally accepted accounting principles.

(c) Any other information that the commissioner may by regulation or order require.

28502. Each licensee, director, officer, and employee of a licensee, and each parent and subsidiary of a licensee shall file with the commissioner all reports that the commissioner may by regulation or order require within the timeframe specified. In addition, each affiliate of a licensee (other than a parent or subsidiary of the licensee) shall file with the commissioner all reports regarding transactions between the affiliate and the licensee that the commissioner may require within the timeframe specified. Each report shall be in a form, shall contain information, shall be signed in a manner, and shall be verified in a manner, that the commissioner may by regulation or order require.

28503. (a) The commissioner shall examine each licensee not less frequently than once each calendar year.

(b) (1) The commissioner may at any time examine any licensee or any parent or subsidiary of a licensee.

(2) The commissioner may at any time examine any affiliate of a licensee (other than a parent or subsidiary of the licensee), but only with respect to matters relating to transactions between the affiliate and the licensee.

(c) The directors, officers, and employees of any licensee or of any affiliate of a licensee being examined by the commissioner and any other person having custody of any of the books, accounts, or records of the licensee or of the affiliate shall exhibit to the commissioner, on request, any or all of the books, accounts, and other records of the licensee or of the affiliate and shall otherwise facilitate the examination so far as it may be in their power to do so. However, in the case of an examination of an affiliate of a licensee other than a parent or subsidiary of the licensee, only books, accounts, and records of the affiliate that relate to transactions between the affiliate and the licensee shall be subject to this subdivision.

(d) The commissioner may, if in his or her opinion it is necessary in the examination of any licensee or of any affiliate of a licensee, retain any certified public accountant, attorney, appraiser, or other person to assist him or her, and the licensee shall pay, within 10 days

after receipt of a statement from the commissioner, the fees of the person retained.

28504. (a) A licensee may, after the approval of the board of directors, executive committee, or other policy body of the licensee, cause or permit any other person to make or keep any of its books, accounts, or other records.

(b) If any person other than a licensee makes or keeps any of the books, accounts, or other records of the licensee, the provisions of this division and of any regulation or order issued under this division shall apply to the person with respect to the performance of those services and with respect to those books, accounts, and other records to the same extent as if the person were the licensee.

(c) If any person other than an affiliate of a licensee makes or keeps any of the books, accounts, or other records of the affiliate or, in the case of an affiliate other than a parent or subsidiary of the licensee, the books, accounts, and other records of the affiliate that relate to transactions between the affiliate and the licensee, the provisions of this division and of any regulation or order issued under this division shall apply to the person with respect to those books, accounts, and other records to the same extent as if the person were the affiliate.

28505. Subject to the provisions of Rules 250.10 and 250.10.5 of the Commissioner of Corporations (10 C.C.R. Secs. 250.10 and 250.10.5), the commissioner may make available to the public any report filed with him or her under this division or under any regulations or order issued under this division.

28506. The commissioner, on behalf of the Trade and Commerce Agency, shall forward economic benefit surveys and questionnaires to the licensees for their completion. The surveys and questionnaires shall be for the purpose of evaluating the economic benefits to the State of California resulting from the activities of the capital access companies licensed under this division. The information requested from the licensees shall be reasonable in scope and shall include, but not be limited to, the number and type of jobs created and retained by the small business firms provided financing assistance, data on growth and expansion of the small business firms provided financing assistance, and aggregate data on tax revenues. The Trade and Commerce Agency shall compile and make this information available to the public annually.

CHAPTER 8. ACQUISITION OF CONTROL

28550. No person shall, except with the prior written approval of the commissioner, acquire control of a licensee.

28551. The commissioner shall approve an application for approval to acquire control of a licensee only if, after notice and a hearing, the commissioner finds all of the following:

(a) That the applicant and the directors and officers of the applicant are of good character and sound financial standing.

(b) That it is reasonable to believe that, if the applicant acquires control of the licensee, the applicant will comply with all applicable provisions of this division and of any regulation or order issued under this division.

(c) That the applicant's plans, if any, to make any major change in the business, corporate structure, or management of the licensee are not detrimental to the safety and soundness of the licensee or the accredited investors of the licensee, or to the public convenience and advantage.

28552. (a) For purposes of Section 28551, the commissioner may find:

(1) That an applicant or a director or officer of an applicant is not of good character if the person has been convicted of, or has pleaded nolo contendere to, a crime involving fraud or dishonesty.

(2) That an applicant's plan to make a major change in the management of a licensee is detrimental to the safety and soundness of the licensee or the accredited investors of the licensee and to the public convenience and advantage if the plan provides for a person who has been convicted of, or has pleaded nolo contendere to, a crime involving fraud or dishonesty to become a director or officer of the licensee.

(b) Subdivision (a) shall not be deemed to be the only grounds upon which the commissioner may find, for purposes of Section 28551, that an applicant or a director or officer of an applicant is not of good character or that an applicant's plan to make a major change in the management of a licensee is detrimental to the safety and soundness of a licensee or to the accredited investors of the licensee, or to the public convenience and advantage.

CHAPTER 9. MERGER AND PURCHASE OR SALE OF BUSINESS

28600. For purposes of this chapter:

(a) "Acquiring licensee" means either of the following:

(1) In the case of a merger, the licensee that is the surviving company.

(2) In the case of a purchase or sale, the licensee that is the purchaser.

(b) "Disappearing company" has the meaning set forth in Section 165.

(c) "Surviving company" has the meaning set forth in Section 190.

28601. No licensee shall merge with any other company unless either of the following apply:

(a) If the licensee is to be the surviving company, the merger is first approved by the commissioner.

(b) If the licensee is to be a disappearing company, the surviving company is a licensee and the merger is first approved by the commissioner.

28602. No licensee shall purchase all or substantially all of the business of any other person unless the purchase is first approved by the commissioner.

28603. No licensee shall sell all or substantially all of its business to any other person unless the other person is a licensee and the sale is first approved by the commissioner.

28604. The commissioner shall approve an application for approval of a merger, purchase, or sale, only if, after notice and a hearing, the commissioner finds all of the following:

(a) That the merger, purchase, or sale will be safe and sound with respect to the acquiring licensee.

(b) That it is reasonable to believe that, upon consummation of the merger, purchase, or sale, the acquiring licensee will comply with all applicable provisions of this division and of any regulation or order issued under this division.

(c) That the merger, purchase, or sale will not be detrimental to the licensee or the accredited investors of the licensee, or the public convenience and advantage, or, if the merger, purchase, or sale would be detrimental to any of the foregoing, then it is necessary in the interests of the safety and soundness of any of the parties to it.

CHAPTER 10. VOLUNTARY SURRENDER OF LICENSE

28650. Any licensee may offer to surrender its license by filing with the commissioner the license and a report, which shall (a) be in a form, (b) contain information, and (c) be signed and verified in a manner, that the commissioner may by regulation or order require.

28651. (a) Except as otherwise provided in subdivision (b), a voluntary surrender of a license shall be effective upon the issuance of an order by the commissioner accepting the offer of surrender and the report required under Section 28650.

(b) If a proceeding to revoke or suspend a license is pending at the time when the license and the report required under Section 28650 are filed with the commissioner or if a proceeding to revoke or suspend a license or to impose conditions upon the surrender of a license is instituted before the license and the report called for in Section 28650 are filed with the commissioner, the voluntary surrender of the license shall become effective at the time and upon the conditions that the commissioner may by order specify.

CHAPTER 11. ENFORCEMENT

28700. For purposes of this chapter, unless the context otherwise requires:

(a) "Office with a licensee" means the position of director, officer, or employee of the licensee or of any subsidiary of the licensee.

(b) "Subject person," when used with respect to a licensee, means any of the following:

(1) Any controlling person or affiliate of the licensee.

(2) Any director, officer, or employee of the licensee or of any of the persons specified in paragraph (1).

(3) Any other person who participates in the conduct of the business of the licensee.

28701. Whenever it appears to the commissioner that any person has violated, or that there is reasonable cause to believe that any person may violate, any provision of this division or of any regulation or order issued under this division, the commissioner may bring an action in the name of the people of this state in the superior court to enjoin the violation or to enforce compliance with this division or with any regulation or order issued under this division. Upon a proper showing, a restraining order, preliminary or permanent injunction, or writ of mandate shall be granted, and a receiver or a conservator may be appointed for the defendant or the defendant's assets. The court may not require the commissioner to post a bond.

28702. (a) If the commissioner finds that any person has violated, or that there is reasonable cause to believe that any person may violate, Section 28150, the commissioner may order the person to cease and desist from the violation unless and until the person is issued a license.

(b) (1) Within 30 days after an order is issued pursuant to subdivision (a), the person to whom the order is directed may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence a hearing within 15 business days after the application is filed with him or her (or within any longer period to which the person consents), the order shall be deemed rescinded. Upon the completion of the hearing, the commissioner shall affirm, modify, or rescind the order.

(2) The right of any person to whom an order is issued under subdivision (a) to petition for judicial review of the order shall not be affected by the failure of the person to apply to the commissioner for a hearing on the order pursuant to paragraph (1).

28703. The commissioner may issue a cease and desist order, including an order to take appropriate corrective action, if, after notice and a hearing, the commissioner finds either of the following:

(a) That any licensee or any subject person of a licensee has violated, is violating, or that there is reasonable cause to believe that any licensee or any subject person of a licensee may violate, any provision of this division or of any regulation or order issued under this division or any provision of any other applicable law.

(b) That any licensee or any subject person of a licensee has engaged or participated in, is engaging or participating in, or that there is reasonable cause to believe that any licensee or any subject

person of a licensee may engage or participate in, any unsafe or unsound act with respect to the business of the licensee.

28704. (a) The commissioner may issue a cease and desist order, including an order to take appropriate corrective action, if the commissioner finds both of the following:

(1) That any of the factors set forth in Section 28703 is true with respect to any licensee or any subject person of a licensee.

(2) That the action or violation is likely to cause the insolvency of, or substantial dissipation of the assets or earnings of, the licensee, or is likely to seriously weaken the condition of the licensee or otherwise to seriously prejudice the interests of the licensee or the accredited investors of the licensee, prior to the completion of proceedings conducted pursuant to Section 28703.

(b) (1) Within 30 days after an order is issued pursuant to subdivision (a), any licensee or subject person of a licensee to whom the order is directed may file with the commissioner an application for a hearing on the order. The filing of an application for a hearing shall not stay the effectiveness of the order. If the commissioner fails to commence a hearing within 15 business days after the application is filed (or within any longer period to which the licensee or subject person consents), the order shall be deemed rescinded. Upon the completion of the hearing, the commissioner shall affirm, modify, or rescind the order.

(2) The right of any licensee or subject person of a licensee to whom an order is issued under subdivision (a) to petition for judicial review of the order shall not be affected by the failure of the licensee or subject person to apply to the commissioner for a hearing on the order pursuant to paragraph (1).

28705. The commissioner may issue an order removing a subject person from that person's office with the licensee, if any, and prohibiting that person from further participating in any manner in the conduct of the business of the licensee, if, after notice and a hearing, the commissioner finds all of the following:

(a) (1) That the subject person of a licensee has violated a provision of this division or of any regulation or order issued under this division or any provision of any other applicable law;

(2) That the subject person of a licensee has engaged or participated in any unsafe or unsound act with respect to the business of the licensee; or

(3) That the subject person of a licensee has engaged or participated in any act which constitutes a breach of his or her fiduciary duty as a subject person.

(b) (1) That the act, violation, or breach of fiduciary duty has caused or is likely to cause substantial financial loss or other damage to the licensee or the accredited investors of the licensee; or

(2) That the act, violation, or breach of fiduciary duty has seriously prejudiced or is likely to seriously prejudice the interests of the licensee or the accredited investors of the licensee; or

(3) That the subject person has received financial gain by reason of the act, violation, or breach of fiduciary duty.

(c) That the act, violation, or breach of fiduciary duty either involves dishonesty on the part of the subject person or demonstrates the subject person's gross negligence with respect to the business of the licensee or a willful disregard for the safety and soundness of the licensee.

28706. The commissioner may issue an order removing a subject person from his or her office, if any, with the licensee and prohibiting him or her from further participating in any manner in the conduct of the business of the licensee, except with the prior consent of the commissioner, if the commissioner finds, after notice and a hearing, that the subject person of a licensee has, by engaging or participating in any act with respect to any financial or other business institution which resulted in substantial financial loss or other damage, demonstrated either of the following:

(a) Dishonesty.

(b) Willful or continuing disregard for the safety and soundness of the financial or other business institution.

28707. (a) The commissioner may issue an order suspending a subject person from his or her office, if any, with the licensee and prohibiting him or her from further participating in any manner in the conduct of the business of the licensee, except with the consent of the commissioner, if the commissioner finds both of the following:

(1) That the factors set forth in subdivisions (a), (b), and (c) of Section 28705 or the factors set forth in subdivision (a) of Section 28706 are true with respect to the subject person of a licensee.

(2) That it is necessary for the protection of the interests of the licensee or the accredited investors of the licensee, or for the protection of the public interest that the commissioner immediately suspend the subject person from his or her office, if any, with the licensee and prohibit him or her from further participating in any manner in the conduct of the business of the licensee.

(b) (1) Within 30 days after an order is issued pursuant to subdivision (a), any subject person of a licensee to whom the order is directed may file with the commissioner an application for a hearing on the order. The filing of an application for a hearing shall not stay the effectiveness of the order. If the commissioner fails to begin a hearing within 15 business days after the application is filed (or within any longer period to which the subject person consents), the order shall be deemed rescinded. Upon the completion of the hearing, the commissioner shall affirm, modify, or rescind the order.

(2) The right of any subject person of a licensee to whom an order is issued under subdivision (a) to petition for judicial review of the order shall not be affected by the failure of the subject person to apply to the commissioner for a hearing on the order pursuant to paragraph (1).

28708. (a) The commissioner may issue an order suspending a subject person from his or her office, if any, with the licensee and prohibiting him or her from further participating in any manner in the conduct of the business of the licensee, except with the consent of the commissioner, if the commissioner finds both of the following:

(1) That the subject person of a licensee has been indicted by a grand jury for, or held to answer by a magistrate for, a crime involving dishonesty or breach of trust.

(2) That the continuation of that person as a subject person of the licensee may threaten the interests of the licensee or the accredited investors of the licensee, or may threaten to impair public confidence in the licensee.

(b) The commissioner may issue an order suspending or removing the subject person or former subject person from his or her office, if any, with the licensee and prohibiting him or her from further participating in any manner in the conduct of the business of the licensee, except with the prior consent of the commissioner, if the commissioner finds both of the following:

(1) That the subject person or former subject person of a licensee to whom an order was issued pursuant to subdivision (a) or any other subject person of a licensee has been finally convicted of a crime which is punishable by imprisonment for a term exceeding one year and which involves dishonesty or breach of trust.

(2) That the continuation or resumption by that person as a subject person of the licensee may threaten the interests of the licensee or the accredited investors of the licensee, or may threaten to impair public confidence in the licensee.

(c) (1) Within 30 days after an order is issued pursuant to subdivision (a) or (b), any subject person of a licensee to whom the order is directed may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence a hearing within 15 business days after the application is filed (or within any longer period to which the subject person consents), the order shall be deemed rescinded. Upon the completion of the hearing, the commissioner shall affirm, modify, or rescind the order.

(2) The right of any subject person or former subject person of a licensee to whom an order is issued under subdivision (a) or (b) to petition for judicial review of the order shall not be affected by the failure of the person to apply to the commissioner for a hearing on the order pursuant to paragraph (1).

(d) The fact that any subject person of a licensee charged with a crime involving dishonesty or breach of trust is not finally convicted of the crime shall not preclude the commissioner from issuing an order to the subject person pursuant to any other section of this division.

28709. Any person to whom an order is issued under Section 28705, 28706, 28707, or 28708 may apply to the commissioner to modify or rescind the order. The commissioner shall not grant the

application unless the commissioner finds that it is in the public interest to do so and that it is reasonable to believe that the person will, if and when he or she becomes a subject person of a licensee, comply with all applicable provisions of this division and of any regulation or order issued under this division.

28710. The commissioner may issue an order suspending or revoking the license of a licensee, if, after notice and a hearing, the commissioner finds any of the following:

(a) That the licensee or any controlling person or affiliate of the licensee has violated any provision of this division or of any regulation or order issued under this division or any provision of any other applicable law.

(b) That the licensee is conducting its business in an unsafe and unsound manner.

(c) That the licensee is in a condition that it is unsafe or unsound for it to transact business.

(d) That the licensee has ceased to transact business as a capital access company.

(e) That the licensee is insolvent.

(f) That the licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due.

(g) That the licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under any bankruptcy, reorganization, insolvency, or moratorium law, or that any person has applied for any of that relief under any of those laws against any licensee and the licensee has by any affirmative act approved of or consented to the action or the relief has been granted.

(h) That any fact or condition exists which, if it had existed at the time when any licensee applied for its license, would have been grounds for denying the application.

28711. (a) If the commissioner finds that any of the factors set forth in Section 28709 is true with respect to any licensee and that it is necessary for the protection of the public interest that the commissioner immediately suspend or revoke the license of the licensee, the commissioner may issue an order suspending or revoking the license of the licensee.

(b) Within 30 days after an order is issued pursuant to subdivision (a), any licensee to whom the order is directed may file with the commissioner a request for a hearing on the order. If the commissioner fails to commence a hearing within 15 business days after the request is filed (or within any longer period to which the licensee consents), the order shall be deemed rescinded. Upon the completion of the hearing, the commissioner shall affirm, modify, or rescind the order.

28712. Any person whose license is suspended or revoked shall immediately deliver the license to the commissioner.

28713. Any person to whom an order is issued under Section 28709 or 28710 may apply to the commissioner to modify or rescind the order.

The commissioner shall not grant the application unless the commissioner finds that it is in the public interest to do so and that it is reasonable to believe that the person will, if and when it becomes a licensee, comply with all applicable provisions of this division and of any regulation or order issued under this division.

28714. (a) If the commissioner finds that any of the factors set forth in Section 28709 is true with respect to any licensee and that it is necessary for the protection of the interests of the licensee or the accredited investors of the licensee, or for the protection of the public interest that the commissioner take immediate possession of the property and business of the licensee, the commissioner may forthwith take possession of the property and business of the licensee and retain possession until the licensee resumes business or is finally liquidated. The licensee may, with the consent of the commissioner, resume business upon any conditions that the commissioner may prescribe.

(b) Whenever the commissioner takes possession of the property and business of a licensee pursuant to subdivision (a), the licensee may apply within 10 days to the superior court in the county in which the head office of the licensee is located to enjoin further proceedings. The court, after citing the commissioner to show cause why further proceedings should not be enjoined and after a hearing, may dismiss the application or enjoin the commissioner from further proceedings and order the commissioner to surrender the property and business of the licensee to the licensee or make any further order that may be just.

(c) An appeal may be taken from the judgment of the superior court by the commissioner or by the licensee in the manner provided by law for appeals from the judgment of a superior court. An appeal from the judgment of the superior court shall operate as a stay of the judgment. No bond need be given if the appeal is taken by the commissioner, but if the appeal is taken by the licensee, a bond shall be given as required by the Code of Civil Procedure.

(d) Whenever the commissioner takes possession of the property and business of a licensee pursuant to subdivision (a), the commissioner shall conserve or liquidate the property and business of the licensee.

28715. Sections 11041, 11042, and 11043 of the Government Code do not apply to the Commissioner of Corporations.

CHAPTER 12. CRIMES AND CRIMINAL PENALTIES

Article 1. General Provisions

28800. It shall be unlawful for any person willfully to make any untrue statement of a material fact in any application, report, or other document filed with the commissioner under this division or under any regulation or order issued under this division, or willfully to omit to state in any application, report or other document filed with the commissioner under this division any material fact which is required to be stated therein.

28801. It shall be unlawful for any person having custody of any of the books, accounts, or other records of a licensee willfully to refuse to allow the commissioner, upon request, to inspect or make copies of any of those books, accounts, or other records.

28802. It shall be unlawful for any person, with intent to deceive any director, officer, employee, auditor, or attorney of a licensee, the commissioner or any governmental agency, to make any false entry in any of the books, accounts or other records of the licensee, to omit to make any entry in those books, accounts or other records which the person is required to make, or to alter, conceal, or destroy any of those books, accounts, or other records.

Article 2. Conflicts of Interest

28820. In this article, unless the context otherwise requires:

(a) "Adviser," when used with respect to a licensee, means any person who regularly provides legal, accounting, investment, or management services or advice to the licensee.

(b) (1) "Associate," when used with respect to a licensee, means all of the following:

(A) Any principal shareholder, director, officer, manager, agent, or adviser of such licensee.

(B) Any director, officer, partner, general manager, agent, employer, or employee of any person referred to in subparagraph (A).

(C) Any person who controls, is controlled by, or is under common control with, any person referred to in subparagraph (A), directly or indirectly, through one or more intermediaries.

(D) Any close relative of any person referred to in subparagraph (A).

(E) Any person of which any person referred to in subparagraphs (A) to (D), inclusive, is a director or officer.

(F) Any person in which any person referred to in subparagraphs (A) to (D), inclusive, or any combination of persons acting in concert owns or controls, directly or indirectly, a 10 percent or greater equity interest.

(2) For purposes of this subdivision, any person who is in any of the relationships referred to in subparagraphs (A) to (F), inclusive, of paragraph (1) within six months before or after a licensee provides financing assistance shall be deemed to be in the relationship as of the date when the licensee provides such financing assistance.

(3) For purposes of this subdivision, if a licensee, in order to protect its interests, designates any person to serve as a director of, officer of, or in any capacity in the management of, a small business firm to which the licensee provides financing assistance, the person shall not, on that account, be deemed to have any relationship with the small business firm. However, this paragraph shall not apply in any case where the person has, directly or indirectly, any other financial interest in the small business firm or where the person, at any time before the licensee provides the financing assistance, served as a director of, officer of, or in any other capacity in the management of, the small business firm for a period of 30 days or more.

(c) "Close relative" means ancestor, lineal descendant, brother or sister and lineal descendants of either, spouse, father-in-law, mother-in-law, son-in-law, brother-in-law, daughter-in-law, or sister-in-law.

(d) "Closing services" means services performed in connection with the providing of financing assistance. "Closing services" includes, but is not limited to, appraising property and preparing credit reports. "Closing services" does not include any services performed after the providing of financing assistance.

(e) "Short-term financing assistance" means any financing assistance with a term of not more than five years.

28821. (a) The commissioner may, by regulation or order, either unconditionally or upon specified terms and conditions and for specified periods, exempt from the provisions of this article any person or transaction or class of persons or transactions, if the commissioner finds the action to be in the public interest and that the regulation of the persons or transactions is not necessary for the purposes of this division.

(b) In exempting from the provisions of this article any person or transaction or class of persons or transactions, the commissioner shall give due consideration to any conflict of interest provision of federal law or regulation applicable to the person or transaction governing participants in federal financing programs.

28822. It shall be unlawful for any licensee, directly or indirectly, to provide financing assistance to any of its associates.

28823. (a) It shall be unlawful for any licensee, directly or indirectly, to provide financing assistance to any associate of another licensee if any associate of the first licensee receives, has received, or is about to receive, directly or indirectly, financing assistance or a commitment for financing assistance from the other licensee.

(b) It shall be unlawful for any licensee, directly or indirectly, to provide financing assistance to any associate of another licensee if any

associate of the first licensee receives, has received, or is about to receive, directly or indirectly, financing assistance or a commitment for financing assistance from a third licensee pursuant to any contract, understanding, or arrangement among the licensees.

28824. It shall be unlawful for any licensee or for any associate of a licensee, directly or indirectly, to borrow money, or purchase or otherwise receive securities, from any of the following:

(a) Any person to which the licensee has provided, or has committed to provide, financing assistance.

(b) Any director of, officer of, or person who owns a 10 percent or greater equity interest in, any person referred to in subdivision (a).

(c) Any close relative of any person referred to in subdivision (b).

28825. It shall be unlawful for any licensee, directly or indirectly, to provide financing assistance to discharge, or to free other funds for use in discharging, in whole or in part, an obligation to any associate of the licensee. However, this section shall not apply to any transaction effected by an associate of a licensee in the normal course of the associate's business involving a line of credit or short-term financing assistance.

28826. It shall be unlawful for any licensee, directly or indirectly, to provide financing assistance for the purchase of property from any associate of the licensee.

28827. It shall be unlawful for any licensee, directly or indirectly, to provide financing assistance to any person to whom any associate of the licensee provides financing assistance, either contemporaneously with, or within one year before or after, the providing of financing assistance by the licensee, if the terms on which the licensee provides financing assistance are less favorable to the licensee than the terms on which the associate provides financing assistance to the associate. In any case where the financing assistance provided by the associate of the licensee is of a different kind from the financing assistance provided by the licensee, the burden shall be on the licensee to prove that the terms on which it provided financing assistance were at least as favorable to it as the terms on which the associate provided financing assistance to the associate. This section shall not apply to any transaction effected by an associate of a licensee in the normal course of the associate's business involving a line of credit or short-term financing assistance.

28828. It shall be unlawful for any associate of a licensee, directly or indirectly, to receive from any person to whom the licensee provides financing assistance, any compensation in connection with the providing of the financing assistance or anything of value for procuring, influencing, or attempting to procure or influence, the licensee's action with respect to the providing of the financing assistance. This section shall not apply to the receipt by an associate of a licensee of fees for bona fide closing services performed by the associate. If the associate is, with the consent and knowledge of the person to whom the financing assistance is provided, designated by

the licensee to perform the services, the services are appropriate and necessary in the circumstances, the fees for the services are approved as reasonable by the licensee, and the fees for the services are collected by the licensee on behalf of the associate.

28829. It shall be unlawful for any licensee, directly or indirectly, to sell or otherwise transfer any of its assets to any of its associates.

Article 3. Criminal Penalties

28880. Any person who willfully violates any provision under this chapter shall upon conviction be fined not more than two hundred fifty thousand dollars ($250,000) or be imprisoned in the state prison, or in a county jail for not more than one year, or be punished by both that fine and imprisonment.

28881. Nothing in this division limits the power of the state to punish any person for any act which constitutes a crime under any statute.

CHAPTER 13. CIVIL PENALTIES

28900. If, after notice and a hearing, the commissioner finds that any person has violated any provision of this division or of any regulation or order issued under this division, the commissioner may order the person to pay to the commissioner a civil penalty in that amount as the commissioner may specify. However, the amount of the civil penalty shall not exceed two thousand five hundred dollars ($2,500) for each violation, or in the case of a continuing violation, two thousand five hundred dollars ($2,500) for each day for which the violation continues.

28901. The provisions of Section 28900 are additional to, and not alternative to, other provisions of this division which authorize the commissioner to issue orders or to take other action on account of a violation of any provision of this division or of any regulation or order issued under this division. However, no person who has been finally convicted under Chapter 12 (commencing with Section 28800) of this division on account of a violation of any provision of Chapter 12 (commencing with Section 28800) shall be liable to pay a civil penalty under Section 28900 on account of the violation.

CHAPTER 14. MISCELLANEOUS PROVISIONS

28950. No provision of this division imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, permit, order, or written interpretive opinion of the commissioner, or any written interpretive opinion of the Attorney General, notwithstanding that the rule, form, permit, order, or written interpretive opinion may later be amended or rescinded or

be determined by judicial or other authority to be invalid for any reason.

28951. (a) The commissioner may from time to time make, amend, and rescind the rules, forms, and orders that are necessary to carry out this law, and define any terms, whether or not used in this law, insofar as the definitions are not inconsistent with this law. For the purpose of rules, the commissioner may, among other things, classify persons within the commissioner's jurisdiction and may prescribe different requirements for different classes. The commissioner may, in the commissioner's discretion, waive any requirement of any rule or form in situations where in his or her opinion the requirement is not necessary in the public interest.

(b) The commissioner may, by regulation or order, either unconditionally or upon specified terms and conditions or for specified periods, exempt from the provisions of this division any person or transaction or class of persons or transactions, if the commissioner finds that action to be in the public interest and that the regulation of those persons or transactions is not necessary for the purposes of this division.

28952. The commissioner may honor requests from interested persons for interpretive opinions.

28953. In any proceeding under this law, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

28954. Every final order, decision, license, or other official act of the commissioner is subject to judicial review in accordance with law.

28955. Nothing in this law, shall impair, derogate, or otherwise affect the authority or powers of the commissioner under the Corporate Securities Law of 1968 (Part 3 (commencing with Section 25000)) or the application of any provision thereof to any person or transaction subject thereto.

28956. If any provision of this division are or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this law which can be given effect without the invalid provision or application, and to this end the provisions of this division are declared to be severable.

28957. Neither the commissioner nor any employee of the commissioner shall use any information which is filed with or obtained by the commissioner which is not public information for personal gain or benefit, nor shall the commissioner nor any employee of the commissioner engage in any securities transaction based on that information, even though public, if there has not been a sufficient period of time for the securities or commodity markets to assimilate that information.

28958. (a) The program established by this division shall be supported from funds appropriated by the Legislature from the State Corporations Fund.

(b) The funds appropriated from the State Corporations Fund and made available for expenditure under subdivision (a) of this section shall come from fees collected under Section 28110, penalties collected under Sections 28880 and 28900, and securities application filing fees collected under subdivisions (e), (f), (h), and (i) of Section 25608 and notice filing fees collected under subdivision (a) of Section 25608.1.

SEC. 4. This act shall become operative on July 1, 1999.

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 669

An act to amend, repeal, and add Section 1347 of the Penal Code, relating to crime victims.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 1347 of the Penal Code is amended to read:

1347. (a) It is the intent of the Legislature in enacting this section to provide the court with discretion to employ unusual court procedures to protect the rights of a child witness, the rights of the defendant, and the integrity of the judicial process. In exercising its discretion, the court necessarily will be required to balance the rights of the defendant against the need to protect a child witness and to preserve the integrity of the court's truthfinding function. This discretion is intended to be used selectively when the facts and circumstances in the individual case present compelling evidence of the need to use these unusual procedures.

(b) Notwithstanding any other law, the court in any criminal proceeding, upon written notice of the prosecutor made at least three days prior to the date of the preliminary hearing or trial date on which the testimony of the minor is scheduled, or during the course of the proceeding on the court's own motion, may order that

the testimony of a minor 10 years of age or younger at the time of the motion be taken by contemporaneous examination and cross-examination in another place and out of the presence of the judge, jury, defendant, and attorneys, and communicated to the courtroom by means of closed-circuit television, if the court makes all of the following findings:

(1) The minor's testimony will involve a recitation of the facts of either of the following:

(A) An alleged sexual offense committed on or with the minor.

(B) The minor is a victim of a violent felony, as defined in subdivision (c) of Section 667.5.

(2) The impact on the minor of one or more of the factors enumerated in subparagraphs (A) to (D), inclusive, is shown by clear and convincing evidence to be so substantial as to make the minor unavailable as a witness unless closed-circuit television is used.

(A) Threats of serious bodily injury to be inflicted on the minor or a family member, of incarceration or deportation of the minor or a family member, or of removal of the minor from the family or dissolution of the family, in order to prevent or dissuade the minor from attending or giving testimony at any trial or court proceeding or to prevent the minor from reporting the alleged sexual offense or from assisting in criminal prosecution.

(B) Use of a firearm or any other deadly weapon during the commission of the crime.

(C) Infliction of great bodily injury upon the victim during the commission of the crime.

(D) Conduct on the part of the defendant or defense counsel during the hearing or trial which causes the minor to be unable to continue his or her testimony.

In making the determination required by this section, the court shall consider the age of the minor, the relationship between the minor and the defendant or defendants, any handicap or disability of the minor, and the nature of the acts charged. The minor's refusal to testify shall not alone constitute sufficient evidence that the special procedure described in this section is necessary in order to obtain the minor's testimony.

(3) The equipment available for use of closed-circuit television would accurately communicate the image and demeanor of the minor to the judge, jury, defendant or defendants, and attorneys.

(c) If the court orders the use of closed-circuit television, two-way closed-circuit television shall be used, except that if the impact on the minor of one or more of the factors enumerated in subparagraphs (A) to (D), inclusive, of paragraph (2) of subdivision (b), is shown by clear and convincing evidence to be so substantial as to make the minor unavailable as a witness even if two-way closed-circuit television is used, one-way closed-circuit television may be used. The prosecution shall give the defendant at least 30 days written notice of the prosecution's intent to seek the use of one-way closed-circuit

television, unless good cause is shown to the court why this 30-day notice requirement should not apply.

(d) (1) The hearing on a motion brought pursuant to this section shall be conducted out of the presence of the jury.

(2) Notwithstanding Section 804 of the Evidence Code or any other law, the court, in determining the merits of the motion, shall not compel the minor to testify at the hearing; nor shall the court deny the motion on the ground that the minor has not testified.

(3) In determining whether the impact on an individual child of one or more of the four factors enumerated in paragraph (2) of subdivision (b) is so substantial that the minor is unavailable as a witness unless two-way or one-way closed-circuit television is used, the court may question the minor in chambers, or at some other comfortable place other than the courtroom, on the record for a reasonable period of time with the support person, the prosecutor, and defense counsel present. The defendant or defendants shall not be present. The court shall conduct the questioning of the minor and shall not permit the prosecutor or defense counsel to examine the minor. The prosecutor and defense counsel shall be permitted to submit proposed questions to the court prior to the session in chambers. Defense counsel shall be afforded a reasonable opportunity to consult with the defendant or defendants prior to the conclusion of the session in chambers.

(e) When the court orders the testimony of a minor to be taken in another place outside of the courtroom, the court shall do all of the following:

(1) Make a brief statement on the record, outside of the presence of the jury, of the reasons in support of its order. While the statement need not include traditional findings of fact, the reasons shall be set forth with sufficient specificity to permit meaningful review and to demonstrate that discretion was exercised in a careful, reasonable, and equitable manner.

(2) Instruct the members of the jury that they are to draw no inferences from the use of closed-circuit television as a means of facilitating the testimony of the minor.

(3) Instruct respective counsel, outside of the presence of the jury, that they are to make no comment during the course of the trial on the use of closed-circuit television procedures.

(4) Instruct the support witness, outside of the presence of the jury, that he or she is not to coach, cue, or in any way influence or attempt to influence the testimony of the minor.

(5) Order that a complete record of the examination of the minor, including the images and voices of all persons who in any way participate in the examination, be made and preserved on videotape in addition to being stenographically recorded. The videotape shall be transmitted to the clerk of the court in which the action is pending and shall be made available for viewing to the prosecuting attorney, the defendant, and his or her attorney during ordinary business

hours. The videotape shall be destroyed after five years have elapsed from the date of entry of judgment. If an appeal is filed, the tape shall not be destroyed until a final judgment on appeal has been ordered. Any videotape which is taken pursuant to this section is subject to a protective order of the court for the purpose of protecting the privacy of the witness. This subdivision does not affect the provisions of subdivision (b) of Section 868.7.

(f) When the court orders the testimony of a minor to be taken in another place outside the courtroom, only the minor, a support person designated pursuant to Section 868.5, a nonuniformed bailiff, and, after consultation with the prosecution and the defense, a representative appointed by the court, shall be physically present for the testimony. A videotape shall record the image of the minor and his or her testimony, and a separate videotape shall record the image of the support person.

(g) When the court orders the testimony of a minor to be taken in another place outside the courtroom, the minor shall be brought into the judge's chambers prior to the taking of his or her testimony to meet for a reasonable period of time with the judge, the prosecutor, and defense counsel. A support person for the minor shall also be present. This meeting shall be for the purpose of explaining the court process to the child and to allow the attorneys an opportunity to establish rapport with the child to facilitate later questioning by closed-circuit television. No participant shall discuss the defendant or any of the facts of the case with the minor during this meeting.

(h) When the court orders the testimony of a minor to be taken in another place outside the courtroom, nothing in this section shall prohibit the court from ordering the minor to be brought into the courtroom for a limited purpose including the identification of the defendant or defendants as the court deems necessary.

(i) The examination shall be under oath, and the defendant shall be able to see and hear the minor witness and if two-way closed-circuit television is used, the defendant's image shall be transmitted live to the witness.

(j) Nothing in this section shall affect the disqualification of witnesses pursuant to Section 701 of the Evidence Code.

(k) The cost of examination by contemporaneous closed-circuit television ordered pursuant to this section shall be borne by the court out of its existing budget.

(*l*) The Judicial Council shall prepare and submit to the Legislature, on or before December 31, 2000, a report on the frequency of use and effectiveness of closed-circuit testimony.

(m) 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. 1.5. Section 1347 of the Penal Code is amended to read:

1347. (a) It is the intent of the Legislature in enacting this section to provide the court with discretion to employ unusual court procedures to protect the rights of a child witness, the rights of the defendant, and the integrity of the judicial process. In exercising its discretion, the court necessarily will be required to balance the rights of the defendant or defendants against the need to protect a child witness and to preserve the integrity of the court's truthfinding function. This discretion is intended to be used selectively when the facts and circumstances in the individual case present compelling evidence of the need to use these unusual procedures.

(b) Notwithstanding any other law, the court in any criminal proceeding, upon written notice of the prosecutor made at least three days prior to the date of the preliminary hearing or trial date on which the testimony of the minor is scheduled, or during the course of the proceeding on the court's own motion, may order that the testimony of a minor 13 years of age or younger at the time of the motion be taken by contemporaneous examination and cross-examination in another place and out of the presence of the judge, jury, defendant or defendants, and attorneys, and communicated to the courtroom by means of closed-circuit television, if the court makes all of the following findings:

(1) The minor's testimony will involve a recitation of the facts of either of the following:

(A) An alleged sexual offense committed on or with the minor.

(B) The minor is a victim of a violent felony, as defined in subdivision (c) of Section 667.5.

(2) The impact on the minor of one or more of the factors enumerated in subparagraphs (A) to (D), inclusive, is shown by clear and convincing evidence to be so substantial as to make the minor unavailable as a witness unless closed-circuit television is used.

(A) Threats of serious bodily injury to be inflicted on the minor or a family member, of incarceration or deportation of the minor or a family member, or of removal of the minor from the family or dissolution of the family, in order to prevent or dissuade the minor from attending or giving testimony at any trial or court proceeding or to prevent the minor from reporting the alleged sexual offense or from assisting in criminal prosecution.

(B) Use of a firearm or any other deadly weapon during the commission of the crime.

(C) Infliction of great bodily injury upon the victim during the commission of the crime.

(D) Conduct on the part of the defendant or defense counsel during the hearing or trial which causes the minor to be unable to continue his or her testimony.

In making the determination required by this section, the court shall consider the age of the minor, the relationship between the minor and the defendant or defendants, any handicap or disability of the minor, and the nature of the acts charged. The minor's refusal to

testify shall not alone constitute sufficient evidence that the special procedure described in this section is necessary in order to obtain the minor's testimony.

(3) The equipment available for use of closed-circuit television would accurately communicate the image and demeanor of the minor to the judge, jury, defendant or defendants, and attorneys.

(c) If the court orders the use of closed-circuit television, two-way closed-circuit television shall be used, except that if the impact on the minor of one or more of the factors enumerated in subparagraphs (A) to (D), inclusive, of paragraph (2) of subdivision (b), is shown by clear and convincing evidence to be so substantial as to make the minor unavailable as a witness even if two-way closed-circuit television is used, one-way closed-circuit television may be used. The prosecution shall give the defendant or defendants at least 30 days written notice of the prosecution's intent to seek the use of one-way closed-circuit television, unless good cause is shown to the court why this 30-day notice requirement should not apply.

(d) (1) The hearing on a motion brought pursuant to this section shall be conducted out of the presence of the jury.

(2) Notwithstanding Section 804 of the Evidence Code or any other law, the court, in determining the merits of the motion, shall not compel the minor to testify at the hearing; nor shall the court deny the motion on the ground that the minor has not testified.

(3) In determining whether the impact on an individual child of one or more of the four factors enumerated in paragraph (2) of subdivision (b) is so substantial that the minor is unavailable as a witness unless two-way or one-way closed-circuit television is used, the court may question the minor in chambers, or at some other comfortable place other than the courtroom, on the record for a reasonable period of time with the support person, the prosecutor, and defense counsel present. The defendant or defendants shall not be present. The court shall conduct the questioning of the minor and shall not permit the prosecutor or defense counsel to examine the minor. The prosecutor and defense counsel shall be permitted to submit proposed questions to the court prior to the session in chambers. Defense counsel shall be afforded a reasonable opportunity to consult with the defendant or defendants prior to the conclusion of the session in chambers.

(e) When the court orders the testimony of a minor to be taken in another place outside of the courtroom, the court shall do all of the following:

(1) Make a brief statement on the record, outside of the presence of the jury, of the reasons in support of its order. While the statement need not include traditional findings of fact, the reasons shall be set forth with sufficient specificity to permit meaningful review and to demonstrate that discretion was exercised in a careful, reasonable, and equitable manner.

(2) Instruct the members of the jury that they are to draw no inferences from the use of closed-circuit television as a means of facilitating the testimony of the minor.

(3) Instruct respective counsel, outside of the presence of the jury, that they are to make no comment during the course of the trial on the use of closed-circuit television procedures.

(4) Instruct the support witness, outside of the presence of the jury, that he or she is not to coach, cue, or in any way influence or attempt to influence the testimony of the minor.

(5) Order that a complete record of the examination of the minor, including the images and voices of all persons who in any way participate in the examination, be made and preserved on videotape in addition to being stenographically recorded. The videotape shall be transmitted to the clerk of the court in which the action is pending and shall be made available for viewing to the prosecuting attorney, the defendant or defendants, and his or her attorney during ordinary business hours. The videotape shall be destroyed after five years have elapsed from the date of entry of judgment. If an appeal is filed, the tape shall not be destroyed until a final judgment on appeal has been ordered. Any videotape which is taken pursuant to this section is subject to a protective order of the court for the purpose of protecting the privacy of the witness. This subdivision does not affect the provisions of subdivision (b) of Section 868.7.

(f) When the court orders the testimony of a minor to be taken in another place outside the courtroom, only the minor, a support person designated pursuant to Section 868.5, a nonuniformed bailiff, and, after consultation with the prosecution and the defense, a representative appointed by the court, shall be physically present for the testimony. A videotape shall record the image of the minor and his or her testimony, and a separate videotape shall record the image of the support person.

(g) When the court orders the testimony of a minor to be taken in another place outside the courtroom, the minor shall be brought into the judge's chambers prior to the taking of his or her testimony to meet for a reasonable period of time with the judge, the prosecutor, and defense counsel. A support person for the minor shall also be present. This meeting shall be for the purpose of explaining the court process to the child and to allow the attorneys an opportunity to establish rapport with the child to facilitate later questioning by closed-circuit television. No participant shall discuss the defendant or defendants or any of the facts of the case with the minor during this meeting.

(h) When the court orders the testimony of a minor to be taken in another place outside the courtroom, nothing in this section shall prohibit the court from ordering the minor to be brought into the courtroom for a limited purpose including the identification of the defendant or defendants as the court deems necessary.

(i) The examination shall be under oath, and the defendant or defendants shall be able to see and hear the minor witness and if two-way closed-circuit television is used, the defendant's image shall be transmitted live to the witness.

(j) Nothing in this section shall affect the disqualification of witnesses pursuant to Section 701 of the Evidence Code.

(k) The cost of examination by contemporaneous closed-circuit television ordered pursuant to this section shall be borne by the court out of its existing budget.

(*l*) The Judicial Council shall prepare and submit to the Legislature, on or before December 31, 2000, a report on the frequency of use and effectiveness of closed-circuit testimony.

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

SEC. 2. Section 1347 is added to the Penal Code, to read:

1347. (a) It is the intent of the Legislature in enacting this section to provide the court with discretion to employ unusual court procedures to protect the rights of a child witness, the rights of the defendant, and the integrity of the judicial process. In exercising its discretion, the court necessarily will be required to balance the rights of the defendant against the need to protect a child witness and to preserve the integrity of the court's truthfinding function. This discretion is intended to be used selectively when the facts and circumstances in the individual case present compelling evidence of the need to use these unusual procedures.

(b) Notwithstanding any other law, the court in any criminal proceeding, upon written notice of the prosecutor made at least three days prior to the date of the preliminary hearing or trial date on which the testimony of the minor is scheduled, or during the course of the proceeding on the court's own motion, may order that the testimony of a minor 10 years of age or younger at the time of the motion be taken by contemporaneous examination and cross-examination in another place and out of the presence of the judge, jury, defendant, and attorneys, and communicated to the courtroom by means of closed-circuit television, if the court makes all of the following findings:

(1) The minor's testimony will involve a recitation of the facts of an alleged sexual offense committed on or with the minor.

(2) The impact on the minor of one or more of the factors enumerated in subparagraphs (A) to (D), inclusive, is shown by clear and convincing evidence to be so substantial as to make the minor unavailable as a witness unless closed-circuit television is used.

(A) Threats of serious bodily injury to be inflicted on the minor or a family member, of incarceration or deportation of the minor or a family member, or of removal of the minor from the family or dissolution of the family, in order to prevent or dissuade the minor from attending or giving testimony at any trial or court proceeding

or to prevent the minor from reporting the alleged sexual offense or from assisting in criminal prosecution.

(B) Use of a firearm or any other deadly weapon during the commission of the crime.

(C) Infliction of great bodily injury upon the victim during the commission of the crime.

(D) Conduct on the part of the defendant or defense counsel during the hearing or trial which causes the minor to be unable to continue his or her testimony.

In making the determination required by this section, the court shall consider the age of the minor, the relationship between the minor and the defendant or defendants, any handicap or disability of the minor, and the nature of the acts charged. The minor's refusal to testify shall not alone constitute sufficient evidence that the special procedure described in this section is necessary in order to obtain the minor's testimony.

(3) The equipment available for use of closed-circuit television would accurately communicate the image and demeanor of the minor to the judge, jury, defendant or defendants, and attorneys.

(c) If the court orders the use of closed-circuit television, two-way closed-circuit television shall be used, except that if the impact on the minor of one or more of the factors enumerated in subparagraphs (A) to (D), inclusive, of paragraph (2) of subdivision (b), is shown by clear and convincing evidence to be so substantial as to make the minor unavailable as a witness even if two-way closed-circuit television is used, one-way closed-circuit television may be used. The prosecution shall give the defendant at least 30 days written notice of the prosecution's intent to seek the use of one-way closed-circuit television, unless good cause is shown to the court why this 30-day notice requirement should not apply.

(d) (1) The hearing on a motion brought pursuant to this section shall be conducted out of the presence of the jury.

(2) Notwithstanding Section 804 of the Evidence Code or any other law, the court, in determining the merits of the motion, shall not compel the minor to testify at the hearing; nor shall the court deny the motion on the ground that the minor has not testified.

(3) In determining whether the impact on an individual child of one or more of the four factors enumerated in paragraph (2) of subdivision (b) is so substantial that the minor is unavailable as a witness unless two-way or one-way closed-circuit television is used, the court may question the minor in chambers, or at some other comfortable place other than the courtroom, on the record for a reasonable period of time with the support person, the prosecutor, and defense counsel present. The defendant or defendants shall not be present. The court shall conduct the questioning of the minor and shall not permit the prosecutor or defense counsel to examine the minor. The prosecutor and defense counsel shall be permitted to submit proposed questions to the court prior to the session in

chambers. Defense counsel shall be afforded a reasonable opportunity to consult with the defendant or defendants prior to the conclusion of the session in chambers.

(e) When the court orders the testimony of a minor to be taken in another place outside of the courtroom, the court shall do all of the following:

(1) Make a brief statement on the record, outside of the presence of the jury, of the reasons in support of its order. While the statement need not include traditional findings of fact, the reasons shall be set forth with sufficient specificity to permit meaningful review and to demonstrate that discretion was exercised in a careful, reasonable, and equitable manner.

(2) Instruct the members of the jury that they are to draw no inferences from the use of closed-circuit television as a means of facilitating the testimony of the minor.

(3) Instruct respective counsel, outside of the presence of the jury, that they are to make no comment during the course of the trial on the use of closed-circuit television procedures.

(4) Instruct the support witness, outside of the presence of the jury, that he or she is not to coach, cue, or in any way influence or attempt to influence the testimony of the minor.

(5) Order that a complete record of the examination of the minor, including the images and voices of all persons who in any way participate in the examination, be made and preserved on videotape in addition to being stenographically recorded. The videotape shall be transmitted to the clerk of the court in which the action is pending and shall be made available for viewing to the prosecuting attorney, the defendant, and his or her attorney during ordinary business hours. The videotape shall be destroyed after five years have elapsed from the date of entry of judgment. If an appeal is filed, the tape shall not be destroyed until a final judgment on appeal has been ordered. Any videotape which is taken pursuant to this section is subject to a protective order of the court for the purpose of protecting the privacy of the witness. This subdivision does not affect the provisions of subdivision (b) of Section 868.7.

(f) When the court orders the testimony of a minor to be taken in another place outside the courtroom, only the minor, a support person designated pursuant to Section 868.5, a nonuniformed bailiff, and, after consultation with the prosecution and the defense, a representative appointed by the court, shall be physically present for the testimony. A videotape shall record the image of the minor and his or her testimony, and a separate videotape shall record the image of the support person.

(g) When the court orders the testimony of a minor to be taken in another place outside the courtroom, the minor shall be brought into the judge's chambers prior to the taking of his or her testimony to meet for a reasonable period of time with the judge, the prosecutor, and defense counsel. A support person for the minor shall

also be present. This meeting shall be for the purpose of explaining the court process to the child and to allow the attorneys an opportunity to establish rapport with the child to facilitate later questioning by closed-circuit television. No participant shall discuss the defendant or any of the facts of the case with the minor during this meeting.

(h) When the court orders the testimony of a minor to be taken in another place outside the courtroom, nothing in this section shall prohibit the court from ordering the minor to be brought into the courtroom for a limited purpose including the identification of the defendant or defendants as the court deems necessary.

(i) The examination shall be under oath, and the defendant shall be able to see and hear the minor witness and if two-way closed-circuit television is used, the defendant's image shall be transmitted live to the witness.

(j) Nothing in this section shall affect the disqualification of witnesses pursuant to Section 701 of the Evidence Code.

(k) The cost of examination by contemporaneous closed-circuit television ordered pursuant to this section shall be borne by the court out of its existing budget.

(*l*) This section shall become operative on January 1, 2001.

SEC. 2.5. Section 1347 is added to the Penal Code, to read:

1347. (a) It is the intent of the Legislature in enacting this section to provide the court with discretion to employ unusual court procedures to protect the rights of a child witness, the rights of the defendant, and the integrity of the judicial process. In exercising its discretion, the court necessarily will be required to balance the rights of the defendant or defendants against the need to protect a child witness and to preserve the integrity of the court's truthfinding function. This discretion is intended to be used selectively when the facts and circumstances in the individual case present compelling evidence of the need to use these unusual procedures.

(b) Notwithstanding any other law, the court in any criminal proceeding, upon written notice of the prosecutor made at least three days prior to the date of the preliminary hearing or trial date on which the testimony of the minor is scheduled, or during the course of the proceeding on the court's own motion, may order that the testimony of a minor 13 years of age or younger at the time of the motion be taken by contemporaneous examination and cross-examination in another place and out of the presence of the judge, jury, defendant or defendants, and attorneys, and communicated to the courtroom by means of closed-circuit television, if the court makes all of the following findings:

(1) The minor's testimony will involve a recitation of the facts of an alleged sexual offense committed on or with the minor.

(2) The impact on the minor of one or more of the factors enumerated in subparagraphs (A) to (D), inclusive, is shown by clear

and convincing evidence to be so substantial as to make the minor unavailable as a witness unless closed-circuit television is used.

(A) Threats of serious bodily injury to be inflicted on the minor or a family member, of incarceration or deportation of the minor or a family member, or of removal of the minor from the family or dissolution of the family, in order to prevent or dissuade the minor from attending or giving testimony at any trial or court proceeding or to prevent the minor from reporting the alleged sexual offense or from assisting in criminal prosecution.

(B) Use of a firearm or any other deadly weapon during the commission of the crime.

(C) Infliction of great bodily injury upon the victim during the commission of the crime.

(D) Conduct on the part of the defendant or defense counsel during the hearing or trial which causes the minor to be unable to continue his or her testimony.

In making the determination required by this section, the court shall consider the age of the minor, the relationship between the minor and the defendant or defendants, any handicap or disability of the minor, and the nature of the acts charged. The minor's refusal to testify shall not alone constitute sufficient evidence that the special procedure described in this section is necessary in order to obtain the minor's testimony.

(3) The equipment available for use of closed-circuit television would accurately communicate the image and demeanor of the minor to the judge, jury, defendant or defendants, and attorneys.

(c) If the court orders the use of closed-circuit television, two-way closed-circuit television shall be used, except that if the impact on the minor of one or more of the factors enumerated in subparagraphs (A) to (D), inclusive, of paragraph (2) of subdivision (b), is shown by clear and convincing evidence to be so substantial as to make the minor unavailable as a witness even if two-way closed-circuit television is used, one-way closed-circuit television may be used. The prosecution shall give the defendant or defendants at least 30 days' written notice of the prosecution's intent to seek the use of one-way closed-circuit television, unless good cause is shown to the court why this 30-day notice requirement should not apply.

(d) (1) The hearing on a motion brought pursuant to this section shall be conducted out of the presence of the jury.

(2) Notwithstanding Section 804 of the Evidence Code or any other law, the court, in determining the merits of the motion, shall not compel the minor to testify at the hearing; nor shall the court deny the motion on the ground that the minor has not testified.

(3) In determining whether the impact on an individual child of one or more of the four factors enumerated in paragraph (2) of subdivision (b) is so substantial that the minor is unavailable as a witness unless two-way or one-way closed-circuit television is used, the court may question the minor in chambers, or at some other

comfortable place other than the courtroom, on the record for a reasonable period of time with the support person, the prosecutor, and defense counsel present. The defendant or defendants shall not be present. The court shall conduct the questioning of the minor and shall not permit the prosecutor or defense counsel to examine the minor. The prosecutor and defense counsel shall be permitted to submit proposed questions to the court prior to the session in chambers. Defense counsel shall be afforded a reasonable opportunity to consult with the defendant or defendants prior to the conclusion of the session in chambers.

(e) When the court orders the testimony of a minor to be taken in another place outside of the courtroom, the court shall do all of the following:

(1) Make a brief statement on the record, outside of the presence of the jury, of the reasons in support of its order. While the statement need not include traditional findings of fact, the reasons shall be set forth with sufficient specificity to permit meaningful review and to demonstrate that discretion was exercised in a careful, reasonable, and equitable manner.

(2) Instruct the members of the jury that they are to draw no inferences from the use of closed-circuit television as a means of facilitating the testimony of the minor.

(3) Instruct respective counsel, outside of the presence of the jury, that they are to make no comment during the course of the trial on the use of closed-circuit television procedures.

(4) Instruct the support witness, outside of the presence of the jury, that he or she is not to coach, cue, or in any way influence or attempt to influence the testimony of the minor.

(5) Order that a complete record of the examination of the minor, including the images and voices of all persons who in any way participate in the examination, be made and preserved on videotape in addition to being stenographically recorded. The videotape shall be transmitted to the clerk of the court in which the action is pending and shall be made available for viewing to the prosecuting attorney, the defendant or defendants, and his or her attorney during ordinary business hours. The videotape shall be destroyed after five years have elapsed from the date of entry of judgment. If an appeal is filed, the tape shall not be destroyed until a final judgment on appeal has been ordered. Any videotape which is taken pursuant to this section is subject to a protective order of the court for the purpose of protecting the privacy of the witness. This subdivision does not affect the provisions of subdivision (b) of Section 868.7.

(f) When the court orders the testimony of a minor to be taken in another place outside the courtroom, only the minor, a support person designated pursuant to Section 868.5, a nonuniformed bailiff, and, after consultation with the prosecution and the defense, a representative appointed by the court, shall be physically present for the testimony. A videotape shall record the image of the minor and

his or her testimony, and a separate videotape shall record the image of the support person.

(g) When the court orders the testimony of a minor to be taken in another place outside the courtroom, the minor shall be brought into the judge's chambers prior to the taking of his or her testimony to meet for a reasonable period of time with the judge, the prosecutor, and defense counsel. A support person for the minor shall also be present. This meeting shall be for the purpose of explaining the court process to the child and to allow the attorneys an opportunity to establish rapport with the child to facilitate later questioning by closed-circuit television. No participant shall discuss the defendant or defendants or any of the facts of the case with the minor during this meeting.

(h) When the court orders the testimony of a minor to be taken in another place outside the courtroom, nothing in this section shall prohibit the court from ordering the minor to be brought into the courtroom for a limited purpose including the identification of the defendant or defendants as the court deems necessary.

(i) The examination shall be under oath, and the defendant or defendants shall be able to see and hear the minor witness and if two-way closed-circuit television is used, the defendant's image shall be transmitted live to the witness.

(j) Nothing in this section shall affect the disqualification of witnesses pursuant to Section 701 of the Evidence Code.

(k) The cost of examination by contemporaneous closed-circuit television ordered pursuant to this section shall be borne by the court out of its existing budget.

(*l*) This section shall become operative on January 1, 2001.

SEC. 3. Sections 1.5 and 2.5 of this bill incorporate amendments to Section 1347 of the Penal Code proposed by both this bill and AB 1692. These sections shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 1347 of the Penal Code, and (3) this bill is enacted after AB 1692, in which case Sections 1 and 2 of this bill shall not become operative.

CHAPTER 670

An act to amend, repeal, and add Section 1347 of the Penal Code, relating to criminal procedure.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 1347 of the Penal Code is amended to read:

1347. (a) It is the intent of the Legislature in enacting this section to provide the court with discretion to employ unusual court procedures to protect the rights of a child witness, the rights of the defendant, and the integrity of the judicial process. In exercising its discretion, the court necessarily will be required to balance the rights of the defendant or defendants against the need to protect a child witness and to preserve the integrity of the court's truthfinding function. This discretion is intended to be used selectively when the facts and circumstances in the individual case present compelling evidence of the need to use these unusual procedures.

(b) Notwithstanding any other law, the court in any criminal proceeding, upon written notice of the prosecutor made at least three days prior to the date of the preliminary hearing or trial date on which the testimony of the minor is scheduled, or during the course of the proceeding on the court's own motion, may order that the testimony of a minor 13 years of age or younger at the time of the motion be taken by contemporaneous examination and cross-examination in another place and out of the presence of the judge, jury, defendant or defendants, and attorneys, and communicated to the courtroom by means of closed-circuit television, if the court makes all of the following findings:

(1) The minor's testimony will involve a recitation of the facts of an alleged sexual offense committed on or with the minor.

(2) The impact on the minor of one or more of the factors enumerated in subparagraphs (A) to (D), inclusive, is shown by clear and convincing evidence to be so substantial as to make the minor unavailable as a witness unless closed-circuit television is used.

(A) Threats of serious bodily injury to be inflicted on the minor or a family member, of incarceration or deportation of the minor or a family member, or of removal of the minor from the family or dissolution of the family, in order to prevent or dissuade the minor from attending or giving testimony at any trial or court proceeding or to prevent the minor from reporting the alleged sexual offense or from assisting in criminal prosecution.

(B) Use of a firearm or any other deadly weapon during the commission of the crime.

(C) Infliction of great bodily injury upon the victim during the commission of the crime.

(D) Conduct on the part of the defendant or defense counsel during the hearing or trial which causes the minor to be unable to continue his or her testimony.

In making the determination required by this section, the court shall consider the age of the minor, the relationship between the minor and the defendant or defendants, any handicap or disability of the minor, and the nature of the acts charged. The minor's refusal to testify shall not alone constitute sufficient evidence that the special procedure described in this section is necessary in order to obtain the minor's testimony.

(3) The equipment available for use of closed-circuit television would accurately communicate the image and demeanor of the minor to the judge, jury, defendant or defendants, and attorneys.

(c) If the court orders the use of closed-circuit television, two-way closed-circuit television shall be used, except that if the impact on the minor of one or more of the factors enumerated in subparagraphs (A) to (D), inclusive, of paragraph (2) of subdivision (b), is shown by clear and convincing evidence to be so substantial as to make the minor unavailable as a witness even if two-way closed-circuit television is used, one-way closed-circuit television may be used. The prosecution shall give the defendant or defendants at least 30 days written notice of the prosecution's intent to seek the use of one-way closed-circuit television, unless good cause is shown to the court why this 30-day notice requirement should not apply.

(d) (1) The hearing on a motion brought pursuant to this section shall be conducted out of the presence of the jury.

(2) Notwithstanding Section 804 of the Evidence Code or any other law, the court, in determining the merits of the motion, shall not compel the minor to testify at the hearing; nor shall the court deny the motion on the ground that the minor has not testified.

(3) In determining whether the impact on an individual child of one or more of the four factors enumerated in paragraph (2) of subdivision (b) is so substantial that the minor is unavailable as a witness unless two-way or one-way closed-circuit television is used, the court may question the minor in chambers, or at some other comfortable place other than the courtroom, on the record for a reasonable period of time with the support person, the prosecutor, and defense counsel present. The defendant or defendants shall not be present. The court shall conduct the questioning of the minor and shall not permit the prosecutor or defense counsel to examine the minor. The prosecutor and defense counsel shall be permitted to submit proposed questions to the court prior to the session in chambers. Defense counsel shall be afforded a reasonable opportunity to consult with the defendant or defendants prior to the conclusion of the session in chambers.

(e) When the court orders the testimony of a minor to be taken in another place outside of the courtroom, the court shall do all of the following:

(1) Make a brief statement on the record, outside of the presence of the jury, of the reasons in support of its order. While the statement need not include traditional findings of fact, the reasons shall be set forth with sufficient specificity to permit meaningful review and to demonstrate that discretion was exercised in a careful, reasonable, and equitable manner.

(2) Instruct the members of the jury that they are to draw no inferences from the use of closed-circuit television as a means of facilitating the testimony of the minor.

(3) Instruct respective counsel, outside of the presence of the jury, that they are to make no comment during the course of the trial on the use of closed-circuit television procedures.

(4) Instruct the support witness, outside of the presence of the jury, that he or she is not to coach, cue, or in any way influence or attempt to influence the testimony of the minor.

(5) Order that a complete record of the examination of the minor, including the images and voices of all persons who in any way participate in the examination, be made and preserved on videotape in addition to being stenographically recorded. The videotape shall be transmitted to the clerk of the court in which the action is pending and shall be made available for viewing to the prosecuting attorney, the defendant or defendants, and his or her attorney during ordinary business hours. The videotape shall be destroyed after five years have elapsed from the date of entry of judgment. If an appeal is filed, the tape shall not be destroyed until a final judgment on appeal has been ordered. Any videotape which is taken pursuant to this section is subject to a protective order of the court for the purpose of protecting the privacy of the witness. This subdivision does not affect the provisions of subdivision (b) of Section 868.7.

(f) When the court orders the testimony of a minor to be taken in another place outside the courtroom, only the minor, a support person designated pursuant to Section 868.5, a nonuniformed bailiff, and, after consultation with the prosecution and the defense, a representative appointed by the court, shall be physically present for the testimony. A videotape shall record the image of the minor and his or her testimony, and a separate videotape shall record the image of the support person.

(g) When the court orders the testimony of a minor to be taken in another place outside the courtroom, the minor shall be brought into the judge's chambers prior to the taking of his or her testimony to meet for a reasonable period of time with the judge, the prosecutor, and defense counsel. A support person for the minor shall also be present. This meeting shall be for the purpose of explaining the court process to the child and to allow the attorneys an opportunity to establish rapport with the child to facilitate later questioning by closed-circuit television. No participant shall discuss the defendant or defendants or any of the facts of the case with the minor during this meeting.

(h) When the court orders the testimony of a minor to be taken in another place outside the courtroom, nothing in this section shall prohibit the court from ordering the minor to be brought into the courtroom for a limited purpose including the identification of the defendant or defendants as the court deems necessary.

(i) The examination shall be under oath, and the defendant or defendants shall be able to see and hear the minor witness and if two-way closed-circuit television is used, the defendant's image shall be transmitted live to the witness.

(j) Nothing in this section shall affect the disqualification of witnesses pursuant to Section 701 of the Evidence Code.

(k) The cost of examination by contemporaneous closed-circuit television ordered pursuant to this section shall be borne by the court out of its existing budget.

SEC. 1.5. Section 1347 of the Penal Code is amended to read:

1347. (a) It is the intent of the Legislature in enacting this section to provide the court with discretion to employ unusual court procedures to protect the rights of a child witness, the rights of the defendant, and the integrity of the judicial process. In exercising its discretion, the court necessarily will be required to balance the rights of the defendant or defendants against the need to protect a child witness and to preserve the integrity of the court's truthfinding function. This discretion is intended to be used selectively when the facts and circumstances in the individual case present compelling evidence of the need to use these unusual procedures.

(b) Notwithstanding any other law, the court in any criminal proceeding, upon written notice of the prosecutor made at least three days prior to the date of the preliminary hearing or trial date on which the testimony of the minor is scheduled, or during the course of the proceeding on the court's own motion, may order that the testimony of a minor 13 years of age or younger at the time of the motion be taken by contemporaneous examination and cross-examination in another place and out of the presence of the judge, jury, defendant or defendants, and attorneys, and communicated to the courtroom by means of closed-circuit television, if the court makes all of the following findings:

(1) The minor's testimony will involve a recitation of the facts of either of the following:

(A) An alleged sexual offense committed on or with the minor.

(B) The minor is a victim of a violent felony, as defined in subdivision (c) of Section 667.5.

(2) The impact on the minor of one or more of the factors enumerated in subparagraphs (A) to (D), inclusive, is shown by clear and convincing evidence to be so substantial as to make the minor unavailable as a witness unless closed-circuit television is used.

(A) Threats of serious bodily injury to be inflicted on the minor or a family member, of incarceration or deportation of the minor or a family member, or of removal of the minor from the family or dissolution of the family, in order to prevent or dissuade the minor from attending or giving testimony at any trial or court proceeding or to prevent the minor from reporting the alleged sexual offense or from assisting in criminal prosecution.

(B) Use of a firearm or any other deadly weapon during the commission of the crime.

(C) Infliction of great bodily injury upon the victim during the commission of the crime.

(D) Conduct on the part of the defendant or defense counsel during the hearing or trial which causes the minor to be unable to continue his or her testimony.

In making the determination required by this section, the court shall consider the age of the minor, the relationship between the minor and the defendant or defendants, any handicap or disability of the minor, and the nature of the acts charged. The minor's refusal to testify shall not alone constitute sufficient evidence that the special procedure described in this section is necessary in order to obtain the minor's testimony.

(3) The equipment available for use of closed-circuit television would accurately communicate the image and demeanor of the minor to the judge, jury, defendant or defendants, and attorneys.

(c) If the court orders the use of closed-circuit television, two-way closed-circuit television shall be used, except that if the impact on the minor of one or more of the factors enumerated in subparagraphs (A) to (D), inclusive, of paragraph (2) of subdivision (b), is shown by clear and convincing evidence to be so substantial as to make the minor unavailable as a witness even if two-way closed-circuit television is used, one-way closed-circuit television may be used. The prosecution shall give the defendant or defendants at least 30 days written notice of the prosecution's intent to seek the use of one-way closed-circuit television, unless good cause is shown to the court why this 30-day notice requirement should not apply.

(d) (1) The hearing on a motion brought pursuant to this section shall be conducted out of the presence of the jury.

(2) Notwithstanding Section 804 of the Evidence Code or any other law, the court, in determining the merits of the motion, shall not compel the minor to testify at the hearing; nor shall the court deny the motion on the ground that the minor has not testified.

(3) In determining whether the impact on an individual child of one or more of the four factors enumerated in paragraph (2) of subdivision (b) is so substantial that the minor is unavailable as a witness unless two-way or one-way closed-circuit television is used, the court may question the minor in chambers, or at some other comfortable place other than the courtroom, on the record for a reasonable period of time with the support person, the prosecutor, and defense counsel present. The defendant or defendants shall not be present. The court shall conduct the questioning of the minor and shall not permit the prosecutor or defense counsel to examine the minor. The prosecutor and defense counsel shall be permitted to submit proposed questions to the court prior to the session in chambers. Defense counsel shall be afforded a reasonable opportunity to consult with the defendant or defendants prior to the conclusion of the session in chambers.

(e) When the court orders the testimony of a minor to be taken in another place outside of the courtroom, the court shall do all of the following:

(1) Make a brief statement on the record, outside of the presence of the jury, of the reasons in support of its order. While the statement need not include traditional findings of fact, the reasons shall be set forth with sufficient specificity to permit meaningful review and to demonstrate that discretion was exercised in a careful, reasonable, and equitable manner.

(2) Instruct the members of the jury that they are to draw no inferences from the use of closed-circuit television as a means of facilitating the testimony of the minor.

(3) Instruct respective counsel, outside of the presence of the jury, that they are to make no comment during the course of the trial on the use of closed-circuit television procedures.

(4) Instruct the support witness, outside of the presence of the jury, that he or she is not to coach, cue, or in any way influence or attempt to influence the testimony of the minor.

(5) Order that a complete record of the examination of the minor, including the images and voices of all persons who in any way participate in the examination, be made and preserved on videotape in addition to being stenographically recorded. The videotape shall be transmitted to the clerk of the court in which the action is pending and shall be made available for viewing to the prosecuting attorney, the defendant or defendants, and his or her attorney during ordinary business hours. The videotape shall be destroyed after five years have elapsed from the date of entry of judgment. If an appeal is filed, the tape shall not be destroyed until a final judgment on appeal has been ordered. Any videotape which is taken pursuant to this section is subject to a protective order of the court for the purpose of protecting the privacy of the witness. This subdivision does not affect the provisions of subdivision (b) of Section 868.7.

(f) When the court orders the testimony of a minor to be taken in another place outside the courtroom, only the minor, a support person designated pursuant to Section 868.5, a nonuniformed bailiff, and, after consultation with the prosecution and the defense, a representative appointed by the court, shall be physically present for the testimony. A videotape shall record the image of the minor and his or her testimony, and a separate videotape shall record the image of the support person.

(g) When the court orders the testimony of a minor to be taken in another place outside the courtroom, the minor shall be brought into the judge's chambers prior to the taking of his or her testimony to meet for a reasonable period of time with the judge, the prosecutor, and defense counsel. A support person for the minor shall also be present. This meeting shall be for the purpose of explaining the court process to the child and to allow the attorneys an opportunity to establish rapport with the child to facilitate later questioning by closed-circuit television. No participant shall discuss the defendant or defendants or any of the facts of the case with the minor during this meeting.

(h) When the court orders the testimony of a minor to be taken in another place outside the courtroom, nothing in this section shall prohibit the court from ordering the minor to be brought into the courtroom for a limited purpose including the identification of the defendant or defendants as the court deems necessary.

(i) The examination shall be under oath, and the defendant or defendants shall be able to see and hear the minor witness and if two-way closed-circuit television is used, the defendant's image shall be transmitted live to the witness.

(j) Nothing in this section shall affect the disqualification of witnesses pursuant to Section 701 of the Evidence Code.

(k) The cost of examination by contemporaneous closed-circuit television ordered pursuant to this section shall be borne by the court out of its existing budget.

(*l*) The Judicial Council shall prepare and submit to the Legislature, on or before December 31, 2000, a report on the frequency of use and effectiveness of closed-circuit testimony.

(m) 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. 1.6. Section 1347 is added to the Penal Code, to read:

1347. (a) It is the intent of the Legislature in enacting this section to provide the court with discretion to employ unusual court procedures to protect the rights of a child witness, the rights of the defendant, and the integrity of the judicial process. In exercising its discretion, the court necessarily will be required to balance the rights of the defendant or defendants against the need to protect a child witness and to preserve the integrity of the court's truthfinding function. This discretion is intended to be used selectively when the facts and circumstances in the individual case present compelling evidence of the need to use these unusual procedures.

(b) Notwithstanding any other law, the court in any criminal proceeding, upon written notice of the prosecutor made at least three days prior to the date of the preliminary hearing or trial date on which the testimony of the minor is scheduled, or during the course of the proceeding on the court's own motion, may order that the testimony of a minor 13 years of age or younger at the time of the motion be taken by contemporaneous examination and cross-examination in another place and out of the presence of the judge, jury, defendant or defendants, and attorneys, and communicated to the courtroom by means of closed-circuit television, if the court makes all of the following findings:

(1) The minor's testimony will involve a recitation of the facts of an alleged sexual offense committed on or with the minor.

(2) The impact on the minor of one or more of the factors enumerated in subparagraphs (A) to (D), inclusive, is shown by clear and convincing evidence to be so substantial as to make the minor unavailable as a witness unless closed-circuit television is used.

(A) Threats of serious bodily injury to be inflicted on the minor or a family member, of incarceration or deportation of the minor or a family member, or of removal of the minor from the family or dissolution of the family, in order to prevent or dissuade the minor from attending or giving testimony at any trial or court proceeding or to prevent the minor from reporting the alleged sexual offense or from assisting in criminal prosecution.

(B) Use of a firearm or any other deadly weapon during the commission of the crime.

(C) Infliction of great bodily injury upon the victim during the commission of the crime.

(D) Conduct on the part of the defendant or defense counsel during the hearing or trial which causes the minor to be unable to continue his or her testimony.

In making the determination required by this section, the court shall consider the age of the minor, the relationship between the minor and the defendant or defendants, any handicap or disability of the minor, and the nature of the acts charged. The minor's refusal to testify shall not alone constitute sufficient evidence that the special procedure described in this section is necessary in order to obtain the minor's testimony.

(3) The equipment available for use of closed-circuit television would accurately communicate the image and demeanor of the minor to the judge, jury, defendant or defendants, and attorneys.

(c) If the court orders the use of closed-circuit television, two-way closed-circuit television shall be used, except that if the impact on the minor of one or more of the factors enumerated in subparagraphs (A) to (D), inclusive, of paragraph (2) of subdivision (b), is shown by clear and convincing evidence to be so substantial as to make the minor unavailable as a witness even if two-way closed-circuit television is used, one-way closed-circuit television may be used. The prosecution shall give the defendant or defendants at least 30 days' written notice of the prosecution's intent to seek the use of one-way closed-circuit television, unless good cause is shown to the court why this 30-day notice requirement should not apply.

(d) (1) The hearing on a motion brought pursuant to this section shall be conducted out of the presence of the jury.

(2) Notwithstanding Section 804 of the Evidence Code or any other law, the court, in determining the merits of the motion, shall not compel the minor to testify at the hearing; nor shall the court deny the motion on the ground that the minor has not testified.

(3) In determining whether the impact on an individual child of one or more of the four factors enumerated in paragraph (2) of subdivision (b) is so substantial that the minor is unavailable as a witness unless two-way or one-way closed-circuit television is used, the court may question the minor in chambers, or at some other comfortable place other than the courtroom, on the record for a reasonable period of time with the support person, the prosecutor,

and defense counsel present. The defendant or defendants shall not be present. The court shall conduct the questioning of the minor and shall not permit the prosecutor or defense counsel to examine the minor. The prosecutor and defense counsel shall be permitted to submit proposed questions to the court prior to the session in chambers. Defense counsel shall be afforded a reasonable opportunity to consult with the defendant or defendants prior to the conclusion of the session in chambers.

(e) When the court orders the testimony of a minor to be taken in another place outside of the courtroom, the court shall do all of the following:

(1) Make a brief statement on the record, outside of the presence of the jury, of the reasons in support of its order. While the statement need not include traditional findings of fact, the reasons shall be set forth with sufficient specificity to permit meaningful review and to demonstrate that discretion was exercised in a careful, reasonable, and equitable manner.

(2) Instruct the members of the jury that they are to draw no inferences from the use of closed-circuit television as a means of facilitating the testimony of the minor.

(3) Instruct respective counsel, outside of the presence of the jury, that they are to make no comment during the course of the trial on the use of closed-circuit television procedures.

(4) Instruct the support witness, outside of the presence of the jury, that he or she is not to coach, cue, or in any way influence or attempt to influence the testimony of the minor.

(5) Order that a complete record of the examination of the minor, including the images and voices of all persons who in any way participate in the examination, be made and preserved on videotape in addition to being stenographically recorded. The videotape shall be transmitted to the clerk of the court in which the action is pending and shall be made available for viewing to the prosecuting attorney, the defendant or defendants, and his or her attorney during ordinary business hours. The videotape shall be destroyed after five years have elapsed from the date of entry of judgment. If an appeal is filed, the tape shall not be destroyed until a final judgment on appeal has been ordered. Any videotape which is taken pursuant to this section is subject to a protective order of the court for the purpose of protecting the privacy of the witness. This subdivision does not affect the provisions of subdivision (b) of Section 868.7.

(f) When the court orders the testimony of a minor to be taken in another place outside the courtroom, only the minor, a support person designated pursuant to Section 868.5, a nonuniformed bailiff, and, after consultation with the prosecution and the defense, a representative appointed by the court, shall be physically present for the testimony. A videotape shall record the image of the minor and his or her testimony, and a separate videotape shall record the image of the support person.

(g) When the court orders the testimony of a minor to be taken in another place outside the courtroom, the minor shall be brought into the judge's chambers prior to the taking of his or her testimony to meet for a reasonable period of time with the judge, the prosecutor, and defense counsel. A support person for the minor shall also be present. This meeting shall be for the purpose of explaining the court process to the child and to allow the attorneys an opportunity to establish rapport with the child to facilitate later questioning by closed-circuit television. No participant shall discuss the defendant or defendants or any of the facts of the case with the minor during this meeting.

(h) When the court orders the testimony of a minor to be taken in another place outside the courtroom, nothing in this section shall prohibit the court from ordering the minor to be brought into the courtroom for a limited purpose including the identification of the defendant or defendants as the court deems necessary.

(i) The examination shall be under oath, and the defendant or defendants shall be able to see and hear the minor witness and if two-way closed-circuit television is used, the defendant's image shall be transmitted live to the witness.

(j) Nothing in this section shall affect the disqualification of witnesses pursuant to Section 701 of the Evidence Code.

(k) The cost of examination by contemporaneous closed-circuit television ordered pursuant to this section shall be borne by the court out of its existing budget.

(*l*) This section shall become operative on January 1, 2001.

SEC. 2. Sections 1.5 and 1.6 of this bill incorporate amendments to Section 1347 of the Penal Code proposed by both this bill and AB 1077. These sections shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 1347 of the Penal Code, and (3) this bill is enacted after AB 1077, in which case Section 1 of this bill shall not become operative.

CHAPTER 671

An act to amend Section 2889.5 of the Public Utilities Code, relating to telephone services.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 2889.5 of the Public Utilities Code is amended to read:

2889.5. (a) No telephone corporation, or any person, firm, or corporation representing a telephone corporation, shall make any change or authorize a different telephone corporation to make any change in the provider of any telephone service for which competition has been authorized of a telephone subscriber until all of the following steps have been completed:

(1) The telephone corporation, its representatives or agents shall thoroughly inform the subscriber of the nature and extent of the service being offered.

(2) The telephone corporation, its representatives or agents shall specifically establish whether the subscriber intends to make any change in his or her telephone service provider, and explain any charges associated with that change.

(3) For sales of residential service, the subscriber's decision to change his or her telephone service provider shall be confirmed by an independent third-party verification company. For purposes of this provision, the confirmation by a third-party verification company shall be made as follows:

(A) The third party verification company shall meet each of the following criteria:

(i) Be independent from the telephone corporation that seeks to provide the subscriber's new service.

(ii) Not be directly or indirectly managed, controlled, or directed, or owned wholly or in part, by the telephone corporation that seeks to provide the new service or by any corporation, firm, or person who directly or indirectly manages, controls, or directs, or owns more than 5 percent of the telephone corporation.

(iii) Operate from facilities physically separate from those of the telephone corporation that seeks to provide the subscriber's new service.

(iv) Not derive commissions or compensation based upon the number of sales confirmed.

(B) The telephone corporation seeking to verify the sale shall do so by connecting the subscriber by telephone to the third-party verification company or by arranging for the third-party verification company to call the subscriber to confirm the sale.

(C) The third-party verification company shall obtain the subscriber's oral confirmation regarding the change, and shall record that confirmation by obtaining appropriate verification data. The record shall be available to the subscriber upon request. Information obtained from the subscriber through confirmation shall not be used for marketing purposes. Any unauthorized release of this information is grounds for a civil suit by the aggrieved subscriber against the telephone corporation or its employees who are responsible for the violation.

(D) Notwithstanding subparagraphs (A), (B), and (C), a service provider shall not be required to comply with these provisions when the customer directly calls the local service provider to make changes

in service providers. However, a service provider shall not avoid the verification requirements by asking a subscribing customer to contact a local exchange service provider directly to make any change in the service provider. A local exchange service provider shall be required to comply with these verification requirements for its own competitive services. However, a local exchange service provider shall not be required to perform any verification requirements for any changes solicited by another telephone corporation.

(4) For sales of all nonresidential services, the subscriber's decision to change his or her service provider shall be confirmed through any of the following means:

(A) Independent third party verification, as set forth in paragraph (3) of subdivision (a).

(B) The telephone corporation shall mail to the subscriber an information package seeking confirmation of his or her change in the telephone corporation. The information package shall describe the new service and shall include a postage prepaid postcard or mailer that the subscriber can use to deny, cancel, or confirm a service order, as soon as possible, and wait 14 days after the information package is mailed before making the change in the telephone corporation. The telephone corporation shall make the change only if the subscriber does not cancel the change in service order.

(C) Verify the subscriber's change in his or her telephone service provider by obtaining the subscriber's signature on a document fully explaining the nature and extent of the action. The document shall be a separate document whose sole purpose is to explain the nature and extent of the action.

(D) Obtain the subscriber's authorization through an electronic means that takes the information, including the calling number, and confirms the change to which the subscriber has given his or her consent.

(5) Where the telephone corporation obtains a written order for service, the document shall thoroughly inform the subscriber of the nature and extent of the action. The subscriber shall be furnished with a copy of the signed document. The subscriber by his or her signature on the document shall indicate a full understanding of the relationship being established with the telephone corporation. When a written subscriber solicitation or other document contains a letter of agency authorizing a change in service provider, in combination with other information including, but not limited to, inducements to subscribers to purchase service, the solicitation shall include a separate document whose sole purpose is to explain the nature and extent of the action. If any part of a mailing to a prospective subscriber is in language other than English, any written authorization contained in the mailing shall be sent to the same prospective subscriber in the same language.

(6) The telephone corporation shall retain a record of the verification of the sale for at least one year. These records shall be made available to the subscriber, the Attorney General, or the commission upon request.

(b) If a residential or business subscriber that has not signed an authorization notifies the telephone corporation within 90 days that he or she does not wish to change telephone corporations, the subscriber shall be switched back to his or her former telephone corporation at the expense of the telephone corporation that initiated the change.

(c) For purposes of this section, competitive services are those services where subscribers have the ability to presubscribe to a telephone service provider.

(d) When a subscriber changes telephone service providers, the change shall be conspicuously noticed on the subscriber's bill. Notice in the following form is deemed to comply with this subdivision:

"NOTICE: Your local (or long distance) telephone service provider has been changed from (name of prior provider) to (name of current provider).

Cost of change: $ _____."

(e) A telephone corporation that violates the verification procedures described in this section is liable as follows:

(1) To the telephone corporation previously selected by the subscriber in an amount equal to all charges paid by the subscriber after the violation.

(2) To the subscriber for an overcharge penalty in an amount equal to 10 percent of all charges billed the subscriber after the violation, which amount shall be credited to the subscriber's telephone bill. This paragraph only applies to a violation of the verification procedures described in this section that is committed on or after January 1, 1999.

(f) The remedies provided by this section are in addition to any other remedies available by law.

(g) As described in federal law, no telephone corporation, or any person, firm, or corporation representing a telephone corporation, shall make any change or authorize a different telephone corporation to make any change in the provider of any telephone service for which competition has been authorized of a telephone subscriber without having on file, or having instituted reasonable steps designed to obtain, signed, dated orders for service from the subscriber. All orders shall be in the form prescribed in federal law for letters of agency. As described in federal law, the telephone corporation is responsible for charges associated with disputed changes in telephone service for which it cannot produce a signed, dated order

for service from the subscriber. This subdivision applies to all intrastate services for which competition has been authorized.

CHAPTER 672

An act to amend Section 2889.5 of the Public Utilities Code, relating to telephone services.

[Approved by Governor September 20, 1998. Filed with Secretary of State September 21, 1998.]

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

SECTION 1. Section 2889.5 of the Public Utilities Code is amended to read:

2889.5. (a) No telephone corporation, or any person, firm, or corporation representing a telephone corporation, shall make any change or authorize a different telephone corporation to make any change in the provider of any telephone service for which competition has been authorized of a telephone subscriber until all of the following steps have been completed:

(1) The telephone corporation, its representatives or agents shall thoroughly inform the subscriber of the nature and extent of the service being offered.

(2) The telephone corporation, its representatives or agents shall specifically establish whether the subscriber intends to make any change in his or her telephone service provider, and explain any charges associated with that change.

(3) For sales of residential service, the subscriber's decision to change his or her telephone service provider shall be confirmed by an independent third-party verification company. For purposes of this provision, the confirmation by a third-party verification company shall be made as follows:

(A) The third-party verification company shall meet each of the following criteria:

(i) Be independent from the telephone corporation that seeks to provide the subscriber's new service.

(ii) Not be directly or indirectly managed, controlled, or directed, or owned wholly or in part, by the telephone corporation that seeks to provide the new service or by any corporation, firm, or person who directly or indirectly manages, controls, or directs, or owns more than 5 percent of the telephone corporation.

(iii) Operate from facilities physically separate from those of the telephone corporation that seeks to provide the subscriber's new service.

(iv) Not derive commissions or compensation based upon the number of sales confirmed.

(B) The telephone corporation seeking to verify the sale shall do so by connecting the subscriber by telephone to the third-party verification company or by arranging for the third-party verification company to call the subscriber to confirm the sale.

(C) The third-party verification company shall obtain the subscriber's oral confirmation regarding the change, and shall record that confirmation by obtaining appropriate verification data. The record shall be available to the subscriber upon request. Information obtained from the subscriber through confirmation shall not be used for marketing purposes. Any unauthorized release of this information is grounds for a civil suit by the aggrieved subscriber against the telephone corporation or its employees who are responsible for the violation.

(D) Notwithstanding subparagraphs (A), (B), and (C), a service provider shall not be required to comply with these provisions when the customer directly calls the local service provider to make changes in service providers. However, a service provider shall not avoid the verification requirements by asking a subscribing customer to contact a local exchange service provider directly to make any change in the service provider. A local exchange service provider shall be required to comply with these verification requirements for its own competitive services. However, a local exchange service provider shall not be required to perform any verification requirements for any changes solicited by another telephone corporation.

(4) For sales of residential service to which paragraph (3) applies, the telephone corporation seeking to verify the change in service, in addition to the requirements of paragraph (3), shall notify the subscriber by United States Postal Service that the subscriber's telephone service provider has been changed. The service provider that initiated the change shall send that notice within 14 days of the date of the change. The notice shall provide the subscriber with clear, legible notice of the change in service provider, and shall include a customer service telephone number for the subscriber to call if the subscriber did not authorize the change in service.

(5) For sales of all nonresidential services, the subscriber's decision to change his or her service provider shall be confirmed through any of the following means:

(A) Independent third-party verification, as set forth in paragraph (3) of subdivision (a).

(B) The telephone corporation shall mail to the subscriber an information package seeking confirmation of his or her change in the telephone corporation. The information package shall describe the new service and shall include a postage prepaid postcard or mailer that the subscriber can use to deny, cancel, or confirm a service order, as soon as possible, and wait 14 days after the information package is mailed before making the change in the telephone corporation. The

telephone corporation shall make the change only if the subscriber does not cancel the change in service order.

(C) Verify the subscriber's change in his or her telephone service provider by obtaining the subscriber's signature on a document fully explaining the nature and extent of the action. The document shall be a separate document whose sole purpose is to explain the nature and extent of the action.

(D) Obtain the subscriber's authorization through an electronic means that takes the information, including the calling number, and confirms the change to which the subscriber has given his or her consent.

(6) Where the telephone corporation obtains a written order for service, the document shall thoroughly inform the subscriber of the nature and extent of the action. The subscriber shall be furnished with a copy of the signed document. The subscriber by his or her signature on the document shall indicate a full understanding of the relationship being established with the telephone corporation. When a written subscriber solicitation or other document contains a letter of agency authorizing a change in service provider, in combination with other information including, but not limited to, inducements to subscribers to purchase service, the solicitation shall include a separate document whose sole purpose is to explain the nature and extent of the action. If any part of a mailing to a prospective subscriber is in language other than English, any written authorization contained in the mailing shall be sent to the same prospective subscriber in the same language.

(7) The telephone corporation shall retain a record of the verification of the sale for at least one year. These records shall be made available to the subscriber, the Attorney General, or the commission upon request.

(b) If a residential or business subscriber that has not signed an authorization notifies the telephone corporation within 90 days that he or she does not wish to change telephone corporations, the subscriber shall be switched back to his or her former telephone corporation at the expense of the telephone corporation that initiated the change.

(c) For purposes of this section, competitive services are those services where subscribers have the ability to presubscribe to a telephone service provider.

(d) When a subscriber changes telephone service providers, the change shall be conspicuously noticed on the subscriber's bill. Notice in the following form is deemed to comply with this subdivision:

"NOTICE: Your local (or long distance) telephone service provider has been changed from (name of prior provider) to (name of current provider).

Cost of change: $ _____."

(e) Any telephone corporation that violates the verification procedures described in this section shall be liable to the telephone corporation previously selected by the subscriber in an amount equal to all charges paid by the subscriber after the violation.

(f) In addition to the liability described in subdivision (e), any telephone corporation that violates the verification procedures described in this section shall credit to a subscriber any charges paid by the subscriber in excess of the amount that the subscriber would have been obligated to pay had the subscriber's telephone service not been changed. The commission shall adopt regulations to govern credits to subscribers pursuant to this subdivision.

(g) The remedies provided by this section are in addition to any other remedies available by law.

(h) As described in federal law, no telephone corporation, or any person, firm, or corporation representing a telephone corporation, shall make any change or authorize a different telephone corporation to make any change in the provider of any telephone service for which competition has been authorized of a telephone subscriber without having on file, or having instituted reasonable steps designed to obtain, signed, dated orders for service from the subscriber. All orders shall be in the form prescribed in federal law for letters of agency. As described in federal law, the telephone corporation is responsible for charges associated with disputed changes in telephone service for which it cannot produce a signed, dated order for service from the subscriber. This subdivision applies to all intrastate services for which competition has been authorized.

CHAPTER 673

An act to amend Sections 47602, 47605, 47613, and 47616.5 of, and to repeal Section 47616 of, the Education Code, relating to charter schools.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 47602 of the Education Code is amended to read:

47602. (a) (1) In the 1998–99 school year, the maximum total number of charter schools authorized to operate in this state shall be 250. In the 1999–2000 school year, and in each successive school year thereafter, an additional 100 charter schools are authorized to operate in this state each successive school year. For the purposes of

implementing this section, the State Board of Education shall assign a number to each charter petition that it grants pursuant to subdivision (j) of Section 47605 and to each charter notice it receives pursuant to subdivision (i) and paragraph (5) of subdivision (j) of Section 47605, based on the chronological order in which the notice is received. The limits contained in this paragraph may not be waived pursuant to Section 33050 or any other provision of law.

(2) By July 1, 2003, the Legislative Analyst shall, pursuant to the criteria in Section 47616.5, report to the Legislature on the effectiveness of the charter school approach authorized under this part and recommend whether to expand or reduce the annual rate of growth of charter schools authorized pursuant to this section.

(b) No charter shall be granted under this part that authorizes the conversion of any private school to a charter school. No charter school shall receive any public funds for a pupil if the pupil also attends a private school that charges the pupil's family for tuition. The State Board of Education shall adopt regulations to implement this section.

SEC. 2. Section 47605 of the Education Code is amended to read:

47605. (a) (1) Except as set forth in paragraph (2), a petition for the establishment of a charter school within any school district may be circulated by any one or more persons seeking to establish the charter school. The petition may be submitted to the governing board of the school district for review after either of the following conditions are met:

(A) The petition has been signed by a number of parents or guardians of pupils that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the school for its first year of operation.

(B) The petition has been signed by a number of teachers that is equivalent to at least one-half of the number of teachers that the charter school estimates will be employed at the school during its first year of operation.

(2) In the case of a petition for the establishment of a charter school through the conversion of an existing public school, that would not be eligible for a loan pursuant to subdivision (b) of Section 41365, the petition may be circulated by any one or more persons seeking to establish the converted charter school. The petition may be submitted to the governing board of the school district for review after the petition has been signed by not less than 50 percent of the permanent status teachers currently employed at the public school to be converted.

(3) A petition shall include a prominent statement that a signature on the petition means that the parent or guardian is meaningfully interested in having his or her child, or ward, attend the charter school, or in the case of a teacher's signature, means that the teacher is meaningfully interested in teaching at the charter school. The proposed charter shall be attached to the petition.

(b) No later than 30 days after receiving a petition, in accordance with subdivision (a), the governing board of the school district shall hold a public hearing on the provisions of the charter, at which time the governing board of the school district shall consider the level of support for the petition by teachers employed by the district, other employees of the district, and parents. Following review of the petition and the public hearing, the governing board of the school district shall either grant or deny the charter within 60 days of receipt of the petition, provided, however, that the date may be extended by an additional 30 days if both parties agree to the extension. In reviewing petitions for the establishment of charter schools pursuant to this section, the chartering authority shall be guided by the intent of the Legislature that charter schools are and should become an integral part of the California educational system and that establishment of charter schools should be encouraged. A school district governing board shall grant a charter for the operation of a school under this part if it is satisfied that granting the charter is consistent with sound educational practice. The governing board of the school district shall not deny a petition for the establishment of a charter school unless it makes written factual findings, specific to the particular petition, setting forth specific facts to support one, or more, of the following findings:

(1) The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.

(2) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.

(3) The petition does not contain the number of signatures required by subdivision (a).

(4) The petition does not contain an affirmation of each of the conditions described in subdivision (d).

(5) The petition does not contain reasonably comprehensive descriptions of all of the following:

(A) A description of the educational program of the school, designed, among other things, to identify those whom the school is attempting to educate, what it means to be an "educated person" in the 21st century, and how learning best occurs. The goals identified in that program shall include the objective of enabling pupils to become self-motivated, competent, and lifelong learners.

(B) The measurable pupil outcomes identified for use by the charter school. "Pupil outcomes," for purposes of this part, means the extent to which all pupils of the school demonstrate that they have attained the skills, knowledge, and attitudes specified as goals in the school's educational program.

(C) The method by which pupil progress in meeting those pupil outcomes is to be measured.

(D) The governance structure of the school, including, but not limited to, the process to be followed by the school to ensure parental involvement.

(E) The qualifications to be met by individuals to be employed by the school.

(F) The procedures that the school will follow to ensure the health and safety of pupils and staff. These procedures shall include the requirement that each employee of the school furnish the school with a criminal record summary as described in Section 44237.

(G) The means by which the school will achieve a racial and ethnic balance among its pupils that is reflective of the general population residing within the territorial jurisdiction of the school district to which the charter petition is submitted.

(H) Admission requirements, if applicable.

(I) The manner in which annual, independent, financial audits shall be conducted, which shall employ generally accepted accounting principles, and the manner in which audit exceptions and deficiencies shall be resolved to the satisfaction of the chartering authority.

(J) The procedures by which pupils can be suspended or expelled.

(K) The manner by which staff members of the charter schools will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security.

(L) The public school attendance alternatives for pupils residing within the school district who choose not to attend charter schools.

(M) A description of the rights of any employee of the school district upon leaving the employment of the school district to work in a charter school, and of any rights of return to the school district after employment at a charter school.

(N) The procedures to be followed by the charter school and the entity granting the charter to resolve disputes relating to provisions of the charter.

(c) (1) Charter schools shall meet all statewide standards and conduct the pupil assessments required pursuant to Section 60605 and any other statewide standards authorized in statute or pupil assessments applicable to pupils in noncharter public schools.

(2) Charter schools shall on a regular basis consult with their parents and teachers regarding the school's educational programs.

(d) (1) In addition to any other requirement imposed under this part, a charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations, shall not charge tuition, and shall not discriminate against any pupil on the basis of ethnicity, national origin, gender, or disability. Except as provided in paragraph (2), admission to a charter school shall not be determined according to the place of residence of the pupil, or of his or her parent or guardian, within this state, except that any existing public school converting partially or entirely to a charter school under this part shall adopt and maintain a policy giving admission preference to pupils who reside within the former attendance area of that public school.

(2) (A) A charter school shall admit all pupils who wish to attend the school.

(B) However, if the number of pupils who wish to attend the charter school exceeds the school's capacity, attendance, except for existing pupils of the charter school, shall be determined by a public random drawing. Preference shall be extended to pupils currently attending the charter school and pupils who reside in the district. Other preferences may be permitted by the chartering authority on an individual school basis and only if consistent with the law.

(C) In the event of a drawing, the chartering authority shall make reasonable efforts to accommodate the growth of the charter school and, in no event, shall take any action to impede the charter school from expanding enrollment to meet pupil demand.

(e) No governing board of a school district shall require any employee of the school district to be employed in a charter school.

(f) No governing board of a school district shall require any pupil enrolled in the school district to attend a charter school.

(g) The governing board of a school district shall require that the petitioner or petitioners provide information regarding the proposed operation and potential effects of the school, including, but not limited to, the facilities to be utilized by the school, the manner in which administrative services of the school are to be provided, and potential civil liability effects, if any, upon the school and upon the school district. The petitioner or petitioners shall also be required to provide financial statements that include a proposed first-year operational budget, including startup costs, and cash-flow and financial projections for the first three years of operation.

(h) In reviewing petitions for the establishment of charter schools within the school district, the school district governing board shall give preference to petitions that demonstrate the capability to provide comprehensive learning experiences to pupils identified by the petitioner or petitioners as academically low achieving pursuant to the standards established by the State Department of Education under Section 54032.

(i) Upon the approval of the petition by the governing board of the school district, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition, to the State Board of Education.

(j) (1) If the governing board of a school district denies a petition, the petitioner may elect to submit the petition for the establishment of a charter school to either the county board of education or directly to the State Board of Education. The county board of education or the State Board of Education, as the case may be, shall review the petition pursuant to subdivision (b). If the petitioner elects to submit a petition for establishment of a charter school to the county board of education and the county board of education denies the petition, the petitioner may file a petition for establishment of a charter school with the State Board of Education.

(2) A charter school for which a charter is granted by either the county board of education or the State Board of Education pursuant to this subdivision shall qualify fully as a charter school for all funding and other purposes of this part.

(3) If either the county board of education or the State Board of Education fails to act on a petition within 120 days of receipt, the decision of the governing board of the school district to deny a petition shall, thereafter, be subject to judicial review.

(4) The State Board of Education shall adopt regulations implementing this subdivision.

(5) Upon the approval of the petition by the county board of education, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition to the State Board of Education.

(k) (1) The State Board of Education may, by mutual agreement, designate its supervisorial and oversight responsibilities for a charter school approved by the State Board of Education to any local education agency in the county in which the charter school is located or to the governing board of the school district that first denied the petition.

(2) The designated local education agency shall have all monitoring and supervising authority of a chartering agency, including, but not limited to, powers and duties set forth in Section 47607, except the power of revocation, which shall remain with the State Board of Education.

(3) A charter school that has been granted its charter by the State Board of Education and elects to seek renewal of its charter shall, prior to expiration of the charter, submit its petition for renewal to the governing board of the school district that initially denied the charter. If the governing board of the school district denies the school's petition for renewal, the school may petition the State Board of Education for renewal of its charter.

(*l*) Teachers in charter schools shall be required to hold a Commission on Teacher Credentialing certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold. These documents shall be maintained on file at the charter school and shall be subject to periodic inspection by the chartering authority. It is the intent of the Legislature that charter schools be given flexibility with regard to noncore, noncollege preparatory courses.

SEC. 2.5. Section 47613 of the Education Code is amended to read:

47613. Notwithstanding subdivision (c) of Section 48209.11, the full apportionment received by the basic aid district pursuant to this section shall be provided to the charter school, and with respect to any pupil of a charter school located within a basic aid school district who resides in a district other than a basic aid district, the Superintendent of Public Instruction, commencing with the 1998–99

fiscal year, shall calculate for that school an apportionment of state funds that provides 70 percent of the district revenue limit calculated pursuant to Section 42238 that would have been apportioned to the school district of residence for any average daily attendance credited pursuant to Section 48209.11. For purposes of this section, "basic aid district" means a school district that does not receive from the state, for any fiscal year in which the subdivision is applied, an apportionment of state funds pursuant to subdivision (h) of Section 42238.

SEC. 3. Section 47616 of the Education Code is repealed.

SEC. 4. Section 47616.5 of the Education Code is amended to read:

47616.5. The Legislative Analyst shall contract for a neutral evaluator to conduct an evaluation of the effectiveness of the charter school approach authorized under this part. On or before July 1, 2003, the neutral evaluator shall report directly to the Legislature and the Governor with recommendations to modify, expand, or terminate the charter school approach. The evaluation of the effectiveness of the charter school approach shall include, but shall not be limited to, the following factors:

(a) If available, the pre- and post-charter school test scores of pupils attending charter schools and other pupil assessment tools.

(b) The level of parental satisfaction with the charter school approach compared with schools within the district in which the charter school is located.

(c) The impact of required parental involvement.

(d) The fiscal structures and practices of charter schools as well as the relationship of these structures and practices to school districts, including the amount of revenue received from various public and private sources.

(e) An assessment of whether or not the charter school approach has resulted in increased innovation and creativity.

(f) Opportunities for teachers under the charter school approach.

(g) Whether or not there is an increased focus on low-achieving and gifted pupils.

(h) Any discrimination and segregation in charter schools.

(i) If available, the number of charter school petitions submitted to governing boards of school districts and the number of those proposals that are denied, per year, since the enactment of the charter school law, including the reasons why the governing boards denied these petitions, and the reasons governing boards have revoked charters.

(j) The governance, fiscal liability and accountability practices and related issues between charter schools and the governing boards of the school districts approving their charters.

(k) The manner in which governing boards of school districts monitor the compliance of the conditions, standards, and procedures entered into under a charter.

(*l*) The extent of the employment of noncredentialed personnel in charter schools.

(m) An assessment of how the exemption from laws governing school districts allows charter schools to operate differently than schools operating under those laws.

(n) A comparison in each school district that has a charter school of the pupil dropout rate in the charter schools and in the noncharter schools.

(o) The role and impact of collective bargaining on charter schools.

CHAPTER 674

An act to amend Sections 41711, 41721, 41731, 41732, 41752, 41752.5, 41753, 41754, 41755, 41756, 41757, 41801, 41802, 41804, 41806, 41862, 41863, 41866, and 41867 of, to amend the heading of Article 4 (commencing with Section 41731) of Chapter 5 of Division 16 of, to add Section 41710 to, and to repeal Article 9 (commencing with Section 41871) of Chapter 5 of Division 16 of, the Food and Agricultural Code, relating to agricultural product standards, and making an appropriation therefor.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 41710 is added to Article 2 (commencing with Section 41711) of Chapter 5 of Division 16 of the Food and Agricultural Code, to read:

41710. The secretary shall not enforce this article, Article 3 (commencing with Section 41721), Article 5 (commencing with Section 41751), Article 6 (commencing with Section 41801), or Article 8 (commencing with Section 41861), during the period that any marketing order covering the same subject is in effect.

SEC. 1.5. Section 41711 of the Food and Agricultural Code is amended to read:

41711. The secretary shall initially adopt the American Dehydrated Onion and Garlic Association quality standards for garlic and onions suitable for dehydration purposes. Those standards shall be subject to subdivision (a) of Section 41865.

SEC. 2. Section 41721 of the Food and Agricultural Code is amended to read:

41721. The secretary by regulation may do all of the following:

(a) Prescribe methods of selecting samples of lots, loads, or containers of garlic and onions for dehydration purposes, which shall

be reasonably calculated to produce by sampling fair representations of the entire lot, load, or container sampled.

(b) Prescribe the methods and procedures for determination of moisture content in deliveries of garlic or onions for dehydration purposes.

(c) Establish and record on the certificate items or conditions affecting lots, loads, or containers of garlic or onions for dehydration purposes, other than those defects established by regulation.

(d) Adopt and enforce other regulations as reasonably necessary for the enforcement of this chapter.

SEC. 3. The heading of Article 4 (commencing with Section 41731) of Chapter 5 of Division 16 of the Food and Agricultural Code is amended to read:

Article 4. Powers of the Secretary

SEC. 4. Section 41731 of the Food and Agricultural Code is amended to read:

41731. The secretary, for the purpose of inspection, may enter any place where garlic or onions for dehydration purposes may be found and take for inspection such representative samples as may be necessary to determine whether or not any uncertified lot or load of garlic or onions complies with the quality standards established pursuant to this chapter, and the percentage of garlic or onions that are not suitable for dehydration purposes. The secretary may subject samples of garlic or onions to any method of inspection or testing prescribed by regulation.

SEC. 5. Section 41732 of the Food and Agricultural Code is amended to read:

41732. The secretary may cause the prosecution of any person violating any provision of this chapter, and may seize and hold a portion of any lot or load of garlic or onions for dehydration purposes involved in a violation, that may in the secretary's judgment be necessary as evidence.

SEC. 6. Section 41752 of the Food and Agricultural Code is amended to read:

41752. The secretary shall inspect all sale or contract deliveries of garlic or onions for dehydration purposes, except garlic or onions grown and dehydrated by a common principal owner, and garlic or onions specifically exempted by regulation.

The secretary, by regulation, shall exempt from inspection and certification any type of delivery of garlic or onions to a dehydrator, if the secretary finds that inspection of the delivery would not serve the purposes of this chapter.

SEC. 7. Section 41752.5 of the Food and Agricultural Code is amended to read:

41752.5. Upon inspection of each load or lot, the secretary shall issue a certificate that shows the weight or percentage of garlic or

onions by defect in the sample that does not conform to the standards established pursuant to this chapter.

SEC. 8. Section 41753 of the Food and Agricultural Code is amended to read:

41753. The secretary may adopt regulations concerning the place of inspection and location of inspection stations after notice and public hearing. In adopting regulations, the secretary shall consider all of the following:

(a) The proximity to the area of production.

(b) The distance to alternative inspection facilities or dehydrators.

(c) Any burden imposed upon growers, dehydrators, or the inspection service.

(d) Any equity that may be advanced between growers and dehydrators.

Until the secretary adopts regulations concerning the location of inspection stations, except as otherwise provided in Sections 41754, 41755, and 41756, inspection shall be performed at the dehydrator or at a receiving station that is established or designated by the operator of the dehydrator.

SEC. 9. Section 41754 of the Food and Agricultural Code is amended to read:

41754. The secretary may review the operation of any inspection station that is not located at a dehydrator during a period beginning November 1st of any year and ending not less than 30 days before the date inspection began at that station in the preceding year and, if the secretary determines that the interest and economy and efficient operation of the inspection service would be served, the secretary, with the consent of each operator of a dehydrator that is involved, may terminate inspection at that place.

SEC. 10. Section 41755 of the Food and Agricultural Code is amended to read:

41755. If the operators of dehydrators do not consent to termination prior to the date that is set forth in Section 41754, the secretary may hold a hearing to consider the termination of inspection at that place. At the hearing testimony of the operators of dehydrators and growers that use the station shall be heard.

SEC. 11. Section 41756 of the Food and Agricultural Code is amended to read:

41756. The secretary may announce to all of the parties of record who will be affected by the action that inspection is terminated for the ensuing season at an inspection station that is not located at a dehydrator if the secretary makes all of the following findings:

(a) Termination of inspection at the station will satisfactorily accomplish the objectives of the inspection service and tend to provide economical and efficient operation.

(b) No unreasonable burden will be imposed upon dehydrators or growers.

(c) Garlic or onions that are normally inspected at the station will not have to be hauled an unreasonable distance to be inspected at another point.

SEC. 12. Section 41757 of the Food and Agricultural Code is amended to read:

41757. The secretary is not required to perform inspection at any place where adequate inspection facilities are not provided.

SEC. 13. Section 41801 of the Food and Agricultural Code is amended to read:

41801. The secretary shall adopt a schedule of uniform fees to defray the cost of administering this chapter.

SEC. 14. Section 41802 of the Food and Agricultural Code is amended to read:

41802. Each operator of a dehydrator that receives deliveries of garlic or onions for dehydration purposes is hereby designated as the authorized agent of the secretary to collect the inspection and certification fees that are chargeable to the dehydrator and to each grower that delivers garlic or onions.

SEC. 15. Section 41804 of the Food and Agricultural Code is amended to read:

41804. Any money that is collected pursuant to this article shall be remitted to the secretary weekly during the garlic and onions dehydration season for deposit into the Department of Food and Agriculture Fund to be used in carrying out the purposes of this chapter.

SEC. 16. Section 41806 of the Food and Agricultural Code is amended to read:

41806. If the secretary determines, as to any money collected as inspection and certification fees, that the return of the money with respect to any dehydration season is impracticable because of the smallness of the amounts returnable, or for any other reason, the money so collected shall not be returned but shall remain in the Department of Food and Agriculture Fund and be available for expenditure for the purposes of this chapter in any subsequent year.

SEC. 17. Section 41862 of the Food and Agricultural Code is amended to read:

41862. There is in the department the Garlic and Onion Dehydrator Advisory Committee, which consists of 11 members and their alternates. The secretary shall appoint five members and their alternates, who shall be growers of garlic or onions for dehydrating, five members and their alternates, who shall be representatives of handlers engaged in the dehydrating of garlic or onions, and one public member and an alternate, both of whom shall have no direct economic interest in the growing or dehydrating of garlic or onions. An alternate member shall serve at a committee meeting only in the absence of, and shall have the same powers and duties as, the member for whom he or she is designated as alternate.

SEC. 18. Section 41863 of the Food and Agricultural Code is amended to read:

41863. In selecting the membership of the committee, the secretary shall take into consideration the recommendations of organizations and associations of producers of garlic and onions for dehydrating and of handlers of garlic or onions for dehydrating.

SEC. 19. Section 41866 of the Food and Agricultural Code is amended to read:

41866. The committee shall meet at the call of its chairperson or at the request to the secretary of any three members of the committee. It shall meet at least once each year.

SEC. 20. Section 41867 of the Food and Agricultural Code is amended to read:

41867. Each member of the committee, any alternate member serving in the absence of a regular member, and any member of an advisory committee appointed by the chairman of the committee, with approval of the secretary, may be reimbursed for the actual necessary expenses incurred in the performance of their official duties. Any reimbursement shall be made at the rate permitted under the rules of the Department of Personnel Administration and a member shall not receive any other compensation.

SEC. 21. Article 9 (commencing with Section 41871) of Chapter 5 of Division 16 of the Food and Agricultural Code is repealed.

SEC. 22. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the duties imposed on a local agency or school district by this act were expressly included in a ballot measure approved by the voters in a statewide election, 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 675

An act to amend Sections 25250.1, 25250.4, and 25250.7 of the Health and Safety Code, and to amend Section 48620 of the Public Resources Code, relating to used oil.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 25250.1 of the Health and Safety Code is amended to read:

25250.1. (a) As used in this article, the following terms have the following meaning:

(1) (A) "Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used, and, as a result of use or as a consequence of extended storage, or spillage, has been contaminated with physical or chemical impurities. Examples of used oil are spent lubricating fluids that have been removed from an engine crankcase, transmission, gearbox, or differential of an automobile, bus, truck, vessel, plane, heavy equipment, or machinery powered by an internal combustion engine; industrial oils, including compressor, turbine, and bearing oil; hydraulic oil; metal-working oil; refrigeration oil; and railroad drainings.

(B) "Used oil" does not include any of the following:

(i) Oil that has a flashpoint below 100 degrees Fahrenheit or that has been mixed with hazardous waste, other than minimal amounts of vehicle fuel.

(ii) (I) Wastewater, the discharge of which is subject to regulation under either Section 307(b) (33 U.S.C. Sec. 1317(b)) or 402 (33 U.S.C. Sec. 1342) of the federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.), including wastewaters at facilities that have eliminated the discharge of wastewater, contaminated with de minimis quantities of used oil.

(II) For purposes of this clause, "de minimis quantities of used oil" are small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations, or small amounts of oil lost to the wastewater treatment system during washing or draining operations.

(III) This exception does not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases or to used oil recovered from wastewaters.

(iii) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(iv) Oil that contains polychlorinated biphenyls (PCBs) at a concentration of 5 ppm or greater.

(v) (I) Oil containing more than 1000 ppm total halogens, which shall be presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Subpart D (commencing with Section 261.30) of Part 261 of Title 40 of the Code of Federal Regulations.

(II) A person may rebut the presumption specified in subclause (I) by demonstrating that the used oil does not contain hazardous waste, including, but not limited to, in the manner specified in subclause (III).

(III) The presumption specified in subclause (I) is rebutted if it is demonstrated that the used oil that is the source of total halogens at a concentration of more than 1000 ppm is solely either household waste, as defined in Section 261.4(b)(1) of Title 40 of the Code of

Federal Regulations, or is collected from conditionally exempt small quantity generators, as defined in Section 261.5 of Title 40 of the Code of Federal Regulations. Nothing in this subclause authorizes any person to violate the prohibition specified in Section 25250.7.

(2) "Board" means the California Integrated Waste Management Board.

(3) (A) "Recycled oil" means any oil that meets all of the following requirements:

(i) Is produced either solely from used oil, or is produced solely from used oil that has been mixed with one or more contaminated petroleum products or oily wastes, other than wastes listed as hazardous under the federal act, provided that if the resultant mixture is subject to regulation as a hazardous waste under paragraph (2) of subdivision (b) of Section 279.10 of Title 40 of the Code of Federal Regulations, the mixture is managed as a hazardous waste in accordance with all applicable hazardous waste regulations, and the recycled oil produced from the mixture is not subject to regulation as a hazardous waste under paragraph (2) of subdivision (b) of Section 279.10 of Title 40 of the Code of Federal Regulations. If the oily wastes with which the used oil is mixed were recovered from a unit treating hazardous wastes that are not oily wastes, these recovered oily wastes are not excluded from being considered as oily wastes for purposes of this section or Section 25250.7.

(ii) The recycled oil meets one of the following requirements:

(I) The recycled oil is produced by a generator lawfully recycling its oil.

(II) The recycled oil is produced at a used oil recycling facility that is authorized to operate pursuant to Section 25200 or 25200.5 solely by means of one or more processes specifically authorized by the department. The department may not authorize a used oil recycling facility to use a process in which used oil is mixed with one or more contaminated petroleum products or oily wastes unless the department determines that the process to be authorized for mixing used oil with those products or wastes will not substantially contribute to the achievement of compliance with the specifications of subparagraph (B).

(III) The recycled oil is produced in another state, and the used oil recycling facility where the recycled oil is produced, and the process by which the recycled oil is produced, are authorized by the agency to implement the federal act in that state.

(iii) Has been prepared for reuse and it achieves minimum standards of purity, in liquid form, as established by the department.

(B) The following standards of purity are in effect for recycled oil unless the department, by regulation, establishes more stringent standards, and are the only allowed exceptions to the criteria adopted pursuant to Section 25141:

(i) Flashpoint: minimum standards set by the American Society for Testing and Materials for the recycled products. However,

recycled oil to be burned for energy recovery shall have a minimum flashpoint of 100 degrees Fahrenheit.

(ii) Total lead: 50 mg/kg or less.

(iii) Total arsenic: 5 mg/kg or less.

(iv) Total chromium: 10 mg/kg or less.

(v) Total cadmium: 2 mg/kg or less.

(vi) Total halogens: 3000 mg/kg or less. However, recycled oil shall be demonstrated by testing to contain not more than 1000 mg/kg total halogens listed in Appendix VIII of Part 261 (commencing with Section 261.1) of Title 40 of the Code of Federal Regulations.

(vii) Total polychlorinated biphenyls (PCBs): 2 mg/kg or less.

(C) Compliance with the specifications of subparagraph (B) or with the requirements of clauses (iv) and (v) of subparagraph (B) of paragraph (1) shall not be met by blending or diluting used oil with crude or virgin oil, or with a contaminated petroleum product or oily waste, except as provided in subclause (II) of clause (ii) of subparagraph (A), and shall be determined in accordance with the procedures for identification and listing of hazardous waste adopted in regulations by the department. Persons authorized by the department to recycle oil shall maintain records of volumes and characteristics of incoming used oil and outgoing recycled oil and documentation concerning the recycling technology utilized to demonstrate to the satisfaction of the department or other enforcement agencies that the recycling has been achieved in compliance with this subdivision.

(D) This paragraph does not apply to oil that is to be disposed of or used in a manner constituting disposal.

(4) "Used oil recycling facility" means a facility that reprocesses or re-refines used oil.

(5) "Used oil storage facility" means a storage facility, as defined in subdivision (b) of Section 25123.3, which stores used oil.

(6) "Used oil transfer facility" means a transfer facility, as defined in subdivision (a) of Section 25123.3, that either stores used oil for periods greater than six days, or greater than 10 days for transfer facilities in areas zoned industrial by the local planning agency, or that transfers used oil from one container to another.

(7) (A) For the purposes of this section and Section 25250.7 only, "contaminated petroleum product" means a product that meets all of the following conditions:

(i) It is a hydrocarbon product whose original intended purpose was to be used as a fuel, lubricant, or solvent.

(ii) It has not been used for its original intended purpose.

(iii) It is not listed in Subpart D (commencing with Section 261.30) of Part 261 of Subchapter 1 of Chapter 1 of Title 40 of the Code of Federal Regulations.

(iv) It has not been mixed with a hazardous waste other than another contaminated petroleum product or an oily waste.

(B) Nothing in this section or in Section 25250.7 shall be construed to affect the exemptions in Section 25250.3, or to subject contaminated petroleum products that are not hazardous wastes to any requirements of this chapter.

(b) (1) Unless otherwise specified, used oil that meets all of the following conditions is not subject to regulation by the department:

(A) The used oil meets the standards set forth in subparagraph (B) of paragraph (3) of subdivision (a).

(B) The used oil is not hazardous pursuant to the criteria adopted pursuant to Section 25141 for constituents other than those listed in paragraph (3) of subdivision (a).

(C) The used oil is not mixed with any waste listed as a hazardous waste in Part 261 (commencing with Section 261.1) of Chapter 1 of Title 40 of the Code of Federal Regulations.

(2) Used oil recycling facilities that are the first to claim that the used oil meets the requirements specified in paragraph (1) shall maintain an operating log and copies of certification forms as specified in Section 25250.19. Any person who generates used oil, and who claims that the used oil is exempt from regulation pursuant to this subdivision, shall notify the department, in writing, of that claim and shall comply with the testing and recordkeeping requirements of Section 25250.19 prior to its reuse. In any action to enforce this article, the burden is on the generator or recycling facility, whichever first claimed that the used oil meets the standards and criteria, and on the transporter or the user of the used oil, whichever has possession, to prove that the oil meets those standards and criteria.

SEC. 2. Section 25250.4 of the Health and Safety Code is amended to read:

25250.4. Used oil shall be managed as a hazardous waste in accordance with the requirements of this chapter until it has been shown to meet the requirements of subdivision (b) of Section 25250.1 or is excluded from regulation as a hazardous waste pursuant to Section 25143.2.

SEC. 3. Section 25250.7 of the Health and Safety Code is amended to read:

25250.7. (a) Except as provided in subdivision (b) or (c), no person who generates, stores, or transfers used oil shall intentionally contaminate used oil with other hazardous waste, other than minimal amounts of vehicle fuel.

(b) A used oil recycling facility may mix used oil with a contaminated petroleum product or with an oily waste other than wastes listed as hazardous under the federal act, if both of the following conditions apply:

(1) If the resultant mixture is subject to regulation as a hazardous waste under paragraph (2) of subdivision (b) of Section 279.10 of Title 40 of the Code of Federal Regulations, it is managed as a

hazardous waste in accordance with all applicable hazardous waste regulations.

(2) The resultant mixture is used to produce recycled oil, as defined in paragraph (3) of subdivision (a) of Section 25250.1, at a used oil recycling facility solely by means of a process that has been specifically authorized by the department.

(c) A generator or transporter may mix used oil with one or more contaminated petroleum products if the mixture is managed in accordance with Section 25143.2 or if all of the following conditions apply:

(1) If the resultant mixture is subject to regulation as a hazardous waste under paragraph (2) of subdivision (b) of Section 279.10 of Title 40 of the Code of Federal Regulations, it is managed as a hazardous waste in accordance with all applicable hazardous waste regulations.

(2) (A) The resultant mixture is transported to a used oil recycling facility that issues a statement, in writing, to the generator or transporter that the mixture will be used to produce recycled oil, as defined in paragraph (3) of subdivision (a) of Section 25250.1, at a facility authorized to operate pursuant to Section 25200 or 25200.5 solely by means of a process that has been specifically authorized by the department.

(B) The resultant mixture is transported to a used oil recycling facility located in another state that is authorized by the agency authorized to implement the federal act in that state.

(3) The mixing is not conducted in a manner which violates subparagraph (C) of paragraph (3) of subdivision (a) of Section 25250.1.

(4) The transporter tests the halogen content of the used oil to demonstrate compliance with clause (vi) of subparagraph (B) of paragraph (3) of subdivision (a) of Section 25250.1 before mixing the used oil with the contaminated petroleum product.

SEC. 4. Section 48620 of the Public Resources Code is amended to read:

48620. "Recycled oil" means recycled oil, as defined in Section 25250.1 of the Health and Safety Code.

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

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

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

CHAPTER 676

An act to amend Section 25150.6 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 25150.6 of the Health and Safety Code is amended to read:

25150.6. (a) Except as provided in subdivision (e), the department, by regulation, may exempt a hazardous waste management activity from one or more of the requirements of this chapter, if the department does all of the following:

(1) Prepares an analysis of the hazardous waste management activity to which the exemption will apply pursuant to subdivision (b). The department shall first prepare the analysis as a preliminary analysis and make it available to the public at the same time that the department gives notice, pursuant to Section 11346.4 of the Government Code, that it proposes to adopt a regulation exempting the hazardous waste management activity from one or more of the requirements of this chapter. The department shall include, in the notice, a reference that the department has prepared a preliminary analysis and a statement concerning where a copy of the preliminary analysis can be obtained. The information in the preliminary analysis shall be updated and the department shall make the analysis available to the public as a final analysis not less than ten working days prior to the date that the regulation is adopted.

(2) Demonstrates that one of the conclusions required by subdivision (c) is valid.

(3) Imposes, as may be necessary, conditions and limitations on the exemption that ensure that the exempted activity will not pose a significant potential hazard to human health or safety or to the environment.

(b) Before the department gives notice of a proposal to adopt a regulation exempting a hazardous waste activity from one or more of the requirements of this chapter pursuant to subdivision (a), and before the department adopts the regulation, the department shall evaluate the hazardous waste management activity and prepare, as required by paragraph (1) of subdivision (a), an analysis that addresses all of the following aspects of the activity, to the extent that

the requirement or requirements from which the activity will be exempted can affect these aspects of the activity:

(1) The types of hazardous waste streams and the estimated amounts of hazardous waste that are managed as part of the activity and the hazards to human health or safety or to the environment posed by reasonably foreseeable mismanagement of those hazardous wastes and their hazardous constituents. The estimate of the amounts of hazardous waste that are managed as part of the activity shall be based upon information reasonably available to the department.

(2) The complexity of the activity, and the amount and complexity of operator training, equipment installation and maintenance, and monitoring that are required to ensure that the activity is conducted in a manner that safely and effectively manages the particular hazardous waste stream.

(3) The chemical or physical hazards that are associated with the activity and the degree to which those hazards are similar to, or differ from, the chemical or physical hazards that are associated with the production processes that are carried out in the facilities that produce the hazardous waste that is managed as part of the activity.

(4) The types of accidents that might reasonably be foreseen to occur during the management of particular types of hazardous waste streams as part of the activity, the likely consequences of those accidents, and the actual reasonably available accident history associated with the activity.

(5) The types of locations at which the activity may be carried out, an estimate of the number of these locations, and the types of hazards that may be posed by proximity to the land uses described in subdivision (b) of Section 25232. The estimate of the number of locations at which the activity may be carried out shall be based upon information reasonably available to the department.

(c) The department shall not give notice proposing the adoption of, and the department may not adopt, a regulation pursuant to subdivision (a) unless it first demonstrates, using the information developed in the analysis prepared pursuant to subdivision (b), that one of the following is valid:

(1) The requirement from which the activity is exempted is not significant or important in either of the following:

(A) Preventing or mitigating potential hazards to human health or safety or to the environment posed by the activity.

(B) Ensuring that the activity is conducted in compliance with other applicable requirements of this chapter and the regulations adopted pursuant to this chapter.

(2) A requirement is imposed and enforced by another public agency that provides protection of human health and safety and the environment that is as effective as, and equivalent to, the protection provided by the requirement, or requirements, from which the activity is being exempted.

(3) Conditions or limitations imposed on the exemption will provide protection of human health and safety and the environment equivalent to the requirement, or requirements, from which the activity is exempted.

(4) Conditions or limitations imposed on the exemption accomplish the same regulatory purpose as the requirement, or requirements, from which the activity is being exempted but at less cost or greater administrative convenience and without increasing potential risks to human health or safety or to the environment.

(d) A regulation adopted pursuant to this section shall not be deemed to meet the standard of necessity, pursuant to Section 11349.1 of the Government Code, unless the department has complied with subdivisions (b) and (c).

(e) The department shall not exempt a hazardous waste management activity from a requirement of this chapter or the regulations adopted by the department if the requirement is also a requirement for that activity under the federal act.

(f) The authority of the department to adopt regulations pursuant to this section shall remain in effect only until January 1, 2002, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date. This subdivision does not invalidate any regulation adopted pursuant to this section prior to the expiration of the department's authority.

CHAPTER 677

An act to amend Sections 12168.5, 14756, 25105, 26205, 26205.1, 26205.5, 27322.2, 34090.5, and 60203 of, and to add Section 12168.7 to, the Government Code, to amend Section 102235 of the Health and Safety Code, and to amend Section 10851 of the Welfare and Institutions Code, relating to records.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 12168.5 of the Government Code is amended to read:

12168.5. When not inconsistent with other provisions of law, in lieu of filing or recording documents presented in paper format, the Secretary of State may file or record any document by using automated data processing, telecommunications, and other information technologies that do not permit additions, deletions, or changes in the original document. The filing or recording shall constitute a unique computerized informational record. The record need not be retained in the form in which it is received, so long as the

technology used to retain the record results in a permanent record that may be accurately reproduced during the period for which the record is required to be retained.

The filing officer may employ a trusted system, as that term is defined in Section 12168.7, of microphotography, optical disk, or reproduction by other techniques that do not permit additions, deletions, or changes to the original document pursuant to regulations adopted by the Secretary of State, as specified in Section 12168.7.

All film used in the microphotography process shall comply with minimum standards of quality approved by the United States Bureau of Standards and the American National Standards Institute. A true copy of the microfilm, optical disk, or other storage medium shall be kept in a safe and separate place for security purposes. A reproduction of any document filed, recorded, stored, or retained on microfilm, optical disk, or by other technology pursuant to this section shall be as admissible in any court as the original itself.

The Secretary of State shall obtain the approval of the Fair Political Practices Commission before applying this section to a filing or recording under the Political Reform Act of 1974 (Title 9 (commencing with Section 81000)).

SEC. 2. Section 12168.7 is added to the Government Code, to read:

12168.7. (a) The California Legislature hereby encourages and requests that the California County Information Services Directors Association and the County Recorders Association of California, when practicable, develop standards for recording permanent and nonpermanent documents in electronic media for the approval and adoption by the Secretary of State pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1.

(b) The standards specified in subdivision (a) shall include a requirement that a trusted system be utilized. For this purpose and for purposes of Sections 12168.5, 25105, 26205, 26205.1, 26205.5, 34090.5, and 60203 and Section 10851 of the Welfare and Institutions Code, "trusted system" means a combination of techniques, policies, and procedures for which there is no plausible scenario in which a document retrieved from or reproduced by the system could differ substantially from the document that is originally stored.

SEC. 3. Section 14756 of the Government Code is amended to read:

14756. The public records of any state agency may be microfilmed, electronically data imaged, or otherwise photographically reproduced and certified upon the written authorization of the head of the agency. The microfilming, electronic data imaging, or photographic reproduction shall be made in compliance with the regulations adopted by the Secretary of State, as specified in Section 12168.7 for recording of permanent records or nonpermanent records.

The certification of each reproduction or set of reproductions shall be in accordance with the standards, or have the approval, of the Attorney General. The certification shall contain a statement of the identity, description, and disposition or location of the records reproduced, the date, reason, and authorization for such reproduction, and other information that the Attorney General requires.

The certified reproductions shall be deemed to be original public records for all purposes, including introduction in courts of law and state agencies.

SEC. 4. Section 25105 of the Government Code is amended to read:

25105. The board of supervisors may authorize the use of photographs, microphotographs, electronic data-processing records, optical disks, or any other medium that is a trusted system and that does not permit additions, deletions, or changes to the original document, or photocopies of all records, books, and minutes of the board.

(a) Each photograph, microphotograph, or photocopy shall be made in a manner and on paper which will comply with the regulations adopted by the Secretary of State, as specified in Section 12168.7 for recording of permanent records or nonpermanent records, whichever applies. Every reproduction shall be deemed and considered an original; a transcript, exemplification, or certified copy of any reproduction shall be deemed and considered a transcript, exemplification, or certified copy, as the case may be, of the original. Each roll of microfilm shall be deemed and constitute a book and shall be designated and numbered, and provision shall be made for preserving, examining, and using it. A duplicate of each roll of microfilm shall be made and kept in a safe and separate place.

(b) Electronic data-processing records, records recorded on optical disk, and records recorded on any other medium shall comply with the minimum standards or guidelines, or both, as recommended by the California County Information Services Directors Association and the County Recorders Associates of California. A duplicate copy of any record reproduced in compliance with the regulations adopted by the Secretary of State, as specified in Section 12168.7 for recording of permanent records or nonpermanent records, whichever applies, shall be deemed an original.

(c) In the event the authorization provided herein is granted, the personal signatures required by Section 25103, if technically feasible, may be reproduced by the authorized process, and the reproduced signatures shall be deemed to satisfy the requirement of Section 25103. If the documents are signed using a digital signature, reproduced documents shall be considered authenticated if the reproduced documents are created by a trusted system, as defined in pertinent digital signature regulations.

SEC. 5. Section 26205 of the Government Code is amended to read:

26205. At the request of the county officer concerned, the board of supervisors of any county may authorize the destruction of any record, paper, or document that is not expressly required by law to be filed and preserved if all of the following conditions are complied with:

(a) The record, paper, or document is photographed, microphotographed, reproduced by electronically recorded video images on magnetic surfaces, recorded in the electronic data-processing system, recorded on optical disk, or reproduced on film or any other medium that is a trusted system and that does not permit additions, deletions, or changes to the original document and is produced in compliance with the regulations adopted by the Secretary of State, as specified in Section 12168.7 for recording of permanent records or nonpermanent records.

(b) The device used to reproduce the record, paper, or document on film, optical disk, or any other medium is one that accurately reproduces the original thereof in all details and which does not permit additions, deletions, or changes to the original document images.

(c) The photographs, microphotographs, electronically recorded video images on magnetic surfaces, records in the electronic data-processing system, records recorded on optical disk, or other reproductions on film or any other medium are placed in conveniently accessible files and provision is made for preserving, examining, and using the files.

Notwithstanding any other provision of this section, destruction of the original records, papers, or documents is not authorized when the method of reproduction pursuant to this section is reproduction of electronically recorded video images on magnetic surfaces unless a duplicate videotape of the images is separately maintained. A duplicate copy of a record contained in the electronic data-processing system, on optical disk, or on any other medium that does not permit additions, deletions, or changes to the original document images shall also be separately maintained.

SEC. 6. Section 26205.1 of the Government Code is amended to read:

26205.1. (a) The county officer having custody of nonjudicial public records, documents, instruments, books, and papers may cause to be destroyed any or all of the records, documents, instruments, books, and papers if all of the following conditions exist:

(1) The board of supervisors of the county has adopted a resolution authorizing the county officer to destroy records, documents, instruments, books, and papers pursuant to this subdivision. The resolution may impose conditions, in addition to those specified in this subdivision, that the board of supervisors determines are appropriate.

(2) The county officer who destroys any record, document, instrument, book, or paper pursuant to the authority granted by this subdivision and a resolution of the board of supervisors adopted pursuant to paragraph (1) shall maintain for the use of the public a photographic or microphotographic film, electronically recorded video production, a record contained in the electronic data-processing system, a record recorded on optical disk, a record recorded by any other medium that does not permit additions, deletions, or changes to the original document, or other duplicate of the record, document, instrument, book, or paper destroyed.

(3) The record, paper or document is photographed, microphotographed, reproduced by electronically recorded video images on magnetic surfaces, recorded in the electronic data-processing system, recorded on optical disk or reproduced on film or any other medium that is a trusted system and that does not permit additions, deletions, or changes to the original document and is produced in compliance with the regulations adopted by the Secretary of State, as specified in Section 12168.7 for recording of permanent records or nonpermanent records.

(b) Paragraphs (2) and (3) of subdivision (a) do not apply to records prepared or received other than pursuant to a state statute or county charter, or records that are not expressly required by law to be filed and preserved.

For the purposes of this section, every reproduction shall be deemed to be an original record and a transcript, exemplification, or certified copy of any reproduction shall be deemed to be a transcript, exemplification, or certified copy, as the case may be, of the original.

(c) The county clerk having custody of the original or a copy of the articles of any corporation may cause the destruction of any or all the documents. "Articles" includes the articles of incorporation, amendments thereto, amended articles, restated articles, certificate of incorporation, certificates of determination of preferences, dissolution certificates, merger certificates, and agreements of consolidation or merger.

(d) Notwithstanding any other provision of this section, destruction of the original records, papers, or documents is not authorized when the method of reproduction pursuant to this section is reproduction of electronically recorded video images on magnetic surfaces unless a duplicate videotape of the images is separately maintained. A duplicate copy of a record contained in the electronic data-processing system, on optical disk, or on any other medium that does not permit additions, deletions, or changes to the original document shall also be separately maintained.

SEC. 7. Section 26205.5 of the Government Code is amended to read:

26205.5. At the request of the county recorder, the board of supervisors of any county may authorize the destruction of any or all of the filed papers or record books created by handwriting, typing on

printed forms, by typewriting, or by photographic methods, in the recorder's official custody, if all of the following conditions are complied with:

(a) The record, paper, or document is photographed, microphotographed, reproduced by electronically recorded video images on magnetic surfaces, recorded in the electronic data-processing system, recorded on optical disk, reproduced on film or any other medium that is a trusted system and that does not permit additions, deletions, or changes to the original document, or reproduced under the direction and control of the county recorder on film, optical disk, or any other medium in compliance with the regulations adopted by the Secretary of State, as specified in Section 12168.7 for recording of permanent records or nonpermanent records.

(b) The device used to reproduce the record, paper, or document on film, optical disk, or any other medium is one that accurately and legibly reproduces the original thereof in all details and that does not permit additions, deletions, or changes to the original document images.

(c) The photographs, microphotographs, or other reproductions on film, optical disk, or any other medium are made as accessible for public reference as the original records were.

(d) A true copy of archival quality of the film, optical disk, or any other medium reproductions shall be kept in a safe and separate place for security purposes.

However, no page of any record, paper, or document shall be destroyed if any page cannot be reproduced on film with full legibility. Every unreproducible page shall be permanently preserved in a manner that will afford easy reference.

For the purposes of this section, every reproduction shall be deemed to be an original record and a transcript, exemplification, or certified copy of any reproduction shall be deemed to be a transcript, exemplification, or certified copy, as the case may be, of the original.

SEC. 8. Section 27322.2 of the Government Code is amended to read:

27322.2. A system of microphotography, optical disk, or reproduction by any other technique that does not permit additions, deletions, or changes to the original document may be used by the recorder as a photographic reproduction process to record some or all instruments, papers, and notices that are required or permitted by law to be recorded or filed. All reproductions shall be made in compliance with the regulations adopted by the Secretary of State, as specified in Section 12168.7. A true copy of the document shall be kept in a safe and separate place that will reasonably assure its preservation for the duration of the retention prescribed by law against loss or destruction. A true copy of the document shall be arranged in a suitable place in the office of the recorder to facilitate public inspection.

SEC. 9. Section 34090.5 of the Government Code is amended to read:

34090.5. Notwithstanding the provisions of Section 34090, the city officer having custody of public records, documents, instruments, books, and papers, may, without the approval of the legislative body or the written consent of the city attorney, cause to be destroyed any or all of the records, documents, instruments, books, and papers, if all of the following conditions are complied with:

(a) The record, paper, or document is photographed, microphotographed, reproduced by electronically recorded video images on magnetic surfaces, recorded in the electronic data-processing system, recorded on optical disk, reproduced on film or any other medium that is a trusted system and that does not permit additions, deletions, or changes to the original document, or reproduced on film, optical disk, or any other medium in compliance with the regulations adopted by the Secretary of State, as specified in Section 12168.7 for recording of permanent records or nonpermanent records.

(b) The device used to reproduce the record, paper, or document on film, optical disk, or any other medium is one which accurately and legibly reproduces the original thereof in all details and that does not permit additions, deletions, or changes to the original document images.

(c) The photographs, microphotographs, or other reproductions on film, optical disk, or any other medium are made as accessible for public reference as the original records were.

(d) A true copy of archival quality of the film, optical disk, or any other medium reproductions shall be kept in a safe and separate place for security purposes.

However, no page of any record, paper, or document shall be destroyed if any page cannot be reproduced on film with full legibility. Every unreproducible page shall be permanently preserved in a manner that will afford easy reference.

For the purposes of this section, every reproduction shall be deemed to be an original record and a transcript, exemplification, or certified copy of any reproduction shall be deemed to be a transcript, exemplification, or certified copy, as the case may be, of the original.

SEC. 10. Section 60203 of the Government Code is amended to read:

60203. The legislative body of a district may authorize the destruction of any record, paper, or document that is not expressly required by law to be filed and preserved if all of the following conditions are complied with:

(a) The record, paper, or document is photographed, microphotographed, reproduced by electronically recorded video images on magnetic surfaces, recorded in the electronic data-processing system, recorded on optical disk, reproduced on film or any other medium that is a trusted system and that does not permit

additions, deletions, or changes to the original document in compliance with the regulations adopted by the Secretary of State, as specified in Section 12168.7 for recording of permanent records or nonpermanent records.

(b) The device used to reproduce the record, paper, or document on film, optical disk, or any other medium is one that accurately reproduces the original thereof in all details and that does not permit additions, deletions, or changes to the original document images.

(c) The photographs, microphotographs, or other reproductions on film, optical disk, or any other medium are placed in conveniently accessible files and provision is made for preserving, examining, and using the files.

For the purposes of this section, every reproduction shall be deemed to be an original record and a transcript, exemplification, or certified copy of any reproduction shall be deemed to be a transcript, exemplification, or certified copy, as the case may be, of the original.

SEC. 11. Section 102235 of the Health and Safety Code is amended to read:

102235. Notwithstanding any other provisions of law relating to retention of public records, the State Registrar may cause the original records of birth, death and marriage filed under this part to be destroyed if all of the following requirements have been met:

(a) One year has elapsed since the date of registration of the records.

(b) The birth, death, or marriage records have been reproduced onto microfilm or optical disk or by any other technique that does not permit additions, deletions, or changes to the original document in compliance with the regulations adopted by the Secretary of State, as specified in Section 12168.7 of the Government Code for recording of permanent records or nonpermanent records.

(c) Adequate provisions are made that the permanent storage medium reflects additions or corrections to the records.

(d) A permanent copy is maintained in a manner that permits it to be used for all purposes served by the original record.

(e) A permanent copy has been stored at a separate physical location in a place and manner that will reasonably assure its preservation indefinitely against loss or destruction.

SEC. 12. Section 10851 of the Welfare and Institutions Code is amended to read:

10851. (a) Each county shall establish and maintain a case record for each public social services case and shall retain the record for a period of three years. The three-year retention period begins on the date on which public social services were last provided. The records shall be retained beyond the three-year retention period when the county is notified by the department or the State Department of Health Services, whichever has jurisdiction over the records, to retain records for a longer period of time. The department or the State Department of Health Services, whichever has jurisdiction

over the records, shall instruct a county to retain records beyond the three-year period when the retention is necessary to a pending civil or criminal action.

(b) Notwithstanding subdivision (a), the board of supervisors of any county may authorize the destruction of the case narrative portions of the case record that are over three years old in any case file, active or inactive, only after audit by the department or the State Department of Health Services, whichever has jurisdiction over the record. In addition, the board may also authorize the destruction of those documents contained in the case file that are over three years old and are no longer necessary to document the recipient's continued eligibility for public social services. However, if a civil or criminal action against a person based on alleged unlawful application for, or receipt of, public social services, is commenced before the expiration of the three-year period no portion of the case record of the person shall be destroyed until the action is terminated.

(c) Each county shall maintain fiscal, statistical, and other records necessary for maintaining accountability and meeting reporting requirements relating to the administration of public social services. These fiscal and reporting records shall be retained for a minimum period of three years from the date of submission of the final expenditure report and shall be retained beyond the three-year period when audit findings have not been resolved.

(d) The retention requirements imposed by subdivisions (a) and (c) of this section are for public social services purposes only and are superseded to the extent another statute requires retention of the same records for a longer period for a different purpose.

(e) Notwithstanding subdivision (a), or any other statutory requirement concerning the retention of public social services records, a child protective services agency may, but need not, retain a child abuse report that has been determined to be an unfounded report, as defined in Section 11165.12 of the Penal Code.

(f) Notwithstanding any other provision of law, a county may retain a case record established pursuant to subdivision (a), and retained pursuant to subdivisions (a) and (c), using either electronic or other alternative storage technologies. Permissible alternative storage technologies shall include, but not be limited to, photography, microphotography, electronically recorded video images on magnetic surfaces, electronic data-processing systems, optical disk storage, or any other electronic medium that is a trusted system and that does not permit additions, deletions, or changes to the original document and meets the regulations adopted by the Secretary of State, as specified in Section 12168.7 of the Government Code for recording of permanent records or nonpermanent records. A duplicate copy of any record reproduced shall be deemed an original.

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CHAPTER 678

An act to amend Section 22138.5, of and to repeal Section 22175 of, the Education Code, and to amend Sections 20200, 20201, 20322, 20398, 20403, 20575, 20578, 20636, 21493, 21752, 21757, 22013, 22013.1, 22013.3, 22013.4, 22013.6, 22013.7, 22013.75, 22013.76, 22013.8, 22013.82, 22013.85, 22013.9, 22013.95, 22013.955, 22013.96, 22013.97, 22013.10, 22013.11, 22014, 22014.1, and 22014.5 of, and to add Section 20057.1 to, the Government Code, relating to public employees.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 22138.5 of the Education Code is amended to read:

22138.5. (a) "Full time" means the days or hours of creditable service the employer requires to be performed by a class of employees in a school year in order to earn the compensation earnable as defined in Section 22115 and specified under the terms of a collective bargaining agreement or employment agreement. For the purpose of crediting service under this part, "full time" shall not be less than the minimum standards specified in this section.

(b) The minimum standard for full time in kindergarten through grade 12 shall be:

(1) One hundred seventy-five days per year or 1,050 hours per year except as provided in paragraphs (2) and (3).

(2) (A) One hundred ninety days per year or 1,520 hours per year for all principals and program managers, including advisers, coordinators, consultants, and developers or planners of curricula, instructional materials, or programs, and for administrators except as provided in subparagraph (B).

(B) Two hundred fifteen days per year or 1,720 hours per year including school and legal holidays pursuant to the policy adopted by the employer's governing board for administrators at a county office of education.

(3) One thousand fifty hours per year for teachers in adult education programs.

(c) The minimum standard for full time in community colleges shall be:

(1) One hundred seventy-five days per year or 1,050 hours per year except as provided in paragraphs (2), (3), (4), (5), and (6). Full time shall include time for duties the employer requires to be performed as part of the full time assignment for a particular class of employees.

(2) One hundred ninety days per year or 1,520 hours per year for all program managers and for administrators, except as provided in paragraph (3).

(3) Two hundred fifteen days per year or 1,720 hours per year including school and legal holidays pursuant to the policy adopted by the employer's governing board for administrators at a district office.

(4) One hundred seventy-five days per year or 1,050 hours per year for all counselors and librarians.

(5) Five hundred twenty-five instructional hours per year for all credit instructors employed on a part-time basis. If an instructor receives compensation for office hours pursuant to Article 10 (commencing with Section 87880) of Chapter 3 of Part 51, then the minimum standard established herein shall be increased appropriately by the number of office hours required annually for the class of employees.

(6) Eight hundred seventy-five instructional hours per year for all adult education instructors. If an instructor receives compensation for office hours pursuant to Article 10 (commencing with Section 87880) of Chapter 3 of Part 51, then the minimum standard established herein shall be increased appropriately by the number of office hours required annually for the class of employees.

(d) The board shall have final authority to determine full time for purposes of crediting service under this part if full time is not otherwise specified herein.

SEC. 2. Section 22175 of the Education Code is repealed.

SEC. 3. Section 20057.1 is added to the Government Code, to read:

20057.1. To qualify as a "public agency" within the meaning of this part, any organization that qualifies under amendments to the definitions of "public agency" effective on or after January 1, 1999, shall also obtain a written advisory opinion from the United States Department of Labor stating that the participation of the officers and employees of the organization in this system does not affect this system's exemption as a governmental plan under Section 1001 et seq. of Title 29 of the United States Code.

SEC. 4. Section 20200 of the Government Code is amended to read:

20200. (a) Notwithstanding any other provision of law, the board may establish a program utilizing the retirement fund to assist system members, through financing, to obtain homes throughout the United States.

(b) For the purpose of this section, the term "member" means any person who is receiving, or is entitled to receive, a retirement allowance funded by this system, the Legislators' Retirement System, the Judges' Retirement System, or the Judges' Retirement System II, notwithstanding any vesting requirement and without regard to present eligibility to retire.

(c) The board shall adopt regulations governing the program that shall, among other things, provide:

(1) That home loans be made available to members for the purchase of single-family dwellings, two-family dwellings, three-family dwellings, four-family dwellings, single-family cooperative apartments, and single-family condominiums.

(2) That private lending institutions throughout the United States shall originate and service its home loans pursuant to agreements entered into between those institutions and the board.

(3) That the recipients of the loans occupy the homes as their permanent residences in accord with rules and regulations established by the board.

(4) That its home loans shall be available only for the purchase or refinancing of homes throughout the United States and that under no condition shall a member have more than one outstanding loan.

(5) That the amount and length of the loans shall be pursuant to a schedule periodically established by the board that shall provide a loan-to-value ratio of: (A) for the first loan, except for three-family dwellings and four-family dwellings, a maximum of 95 percent of the first loan; (B) for the first loan on three-family dwellings and four-family dwellings, a maximum of 90 percent of the first loan; and (C) for each additional loan, a maximum of 80 percent of each additional loan. The portion of any loan exceeding 80 percent of value shall be insured by an admitted mortgage guaranty insurer conforming to Chapter 2A (commencing with Section 12640.01) of Part 6 of Division 2 of the Insurance Code, in an amount so that the unguaranteed portion of the loan does not exceed 75 percent of the market value of the property together with improvements thereon.

(6) That there may be prepayment penalties assessed on its loans in accordance with rules and regulations established by the board.

(7) That the criteria and terms for its loans shall provide the greatest benefit to members consistent with the financial integrity of the program and the sound investment of the retirement fund.

(8) Any other terms and conditions as the board shall deem appropriate.

(d) This section shall be known as, and may be cited as, the Dave Elder Public Employees' Retirement System Member Home Loan Program Act.

SEC. 5. Section 20201 of the Government Code is amended to read:

20201. (a) It is the intent of the Legislature that the provisions of this section be available to assist members in obtaining homes throughout the United States. The Legislature intends that home loans made pursuant to Section 20200 and this section shall be secured primarily by the property acquired except as authorized pursuant to paragraph (1) of subdivision (b) and shall not exceed the fair market value of the property acquired.

(b) The board shall include in any program established pursuant to Section 20200 a procedure whereby a member may obtain 100-percent financing for the purchase of a single-family dwelling unit in accordance with the following criteria:

(1) The member shall obtain one loan with a loan-to-value ratio not to exceed 95 percent secured by the purchased home and a second personal loan with a loan-to-value ratio not to exceed 5 percent secured by a portion of the accumulated contributions and vested accrued benefits in the member's individual account. A member can only have one outstanding personal loan.

(2) The loan secured by the purchased home shall be consistent with the loan-to-value ratios specified in the schedules established pursuant to Section 20200.

(3) The amount of a conforming loan on a single-family dwelling unit shall not exceed 95 percent of the Federal National Mortgage Association (FNMA) conforming loan limits. The amount shall be adjusted annually as determined by the Federal National Mortgage Association (FNMA). In no event, shall the loan amount exceed three hundred fifty thousand dollars ($350,000).

(4) In no event may the personal loan secured by the accumulated contributions and vested accrued benefits in the member's individual account exceed 50 percent of the current value amount of the accumulated contributions.

(5) The pledge of security under this section shall remain in effect until the loan is paid in full.

(c) In the event of a default on the personal loan secured by the member's contributions as authorized by this section, the board may deduct an amount from the member's contributions on deposit and adjust the member's accrued benefit, up to the amount pledged as security, prior to making any disbursement of retirement benefits.

(d) The secured personal loan permitted under this section shall be made available only to currently employed members who meet eligibility criteria the board deems advisable.

(e) If the member is married at the time the home is purchased with a personal loan secured by the member's contributions as authorized by this section, then the member's spouse shall agree in writing to the pledge of security, as to his or her community interest in the amount pledged regardless of whether title to the home is in joint tenancy.

(f) The pledge of security under this section shall take binding effect, notwithstanding Section 21255. In the event of default, the accumulated contributions in the member's account shall be reduced as necessary to recover any outstanding loan balance, not to exceed the pledged amount.

(g) Appropriate administrative costs of implementing this section shall be paid by the members utilizing this section. Those costs may be included in the loan amount.

(h) Appropriate interest rates shall be periodically reviewed and adjusted to provide loans to members consistent with the financial integrity of the member home loan program and the sound and prudent investment of the retirement fund.

(i) The amendments to this section by Chapter 1094 of the Statutes of 1994 shall be deemed to have become operative on November 1, 1993.

(j) The board shall administer this section under other terms and conditions it deems appropriate and in keeping with the investment standard set forth in Section 20151. The board may adopt procedural guidelines as necessary for its administration of this section and to assure compliance with applicable state and federal laws.

SEC. 6. Section 20322 of the Government Code is amended to read:

20322. (a) An elective officer is excluded from membership in this system unless the officer files with the board an election in writing to become a member. The officer may elect at any time, and has the option of making contributions to this system in the amount that the officer would have contributed had the officer not been excluded, plus an amount equal to the interest, to the date or dates of his or her payment, that would have been credited to those contributions had he or she not been excluded. The contributions and interest shall be paid to this system at times, in amounts, and in a manner, fixed by the board. If the officer affirmatively exercises the option:

(1) He or she shall receive credit for previous state service in the same manner as if he or she had not been excluded, and

(2) His or her rate of contributions shall be based on the nearest age at the time he or she first was excluded.

(b) As used in this part, "elective officer" includes any officer of the Senate or Assembly who is elected by vote of the members of either or both of the houses of the Legislature, and any appointive officer of a city or county occupying a fixed term of office, as well as officers of the state or contracting agencies elected by the people, and persons elected to a city council or a county board of supervisors.

(c) Notwithstanding any other provision of subdivision (a) or (b), elected or appointed officers of a county superintendent of schools, school district, or community college district, or of a contracting agency, who serve on public commissions, boards, councils, or similar legislative or administrative bodies are excluded from membership in this system. This exclusion shall only apply to those elected or appointed officers, other than city or county officers, who are first elected or appointed to an office on or after July 1, 1994, or who are elected or appointed to a term of office not consecutive with the term of office held on June 30, 1994. For city or county elected or appointed officers, this exclusion shall only apply to those officers who are first elected or appointed to an office on or after January 1, 1997, or who are elected or appointed to a term of office not consecutive with the

term of office held on December 31, 1996. This exclusion shall not apply to persons elected to a city council or county board of supervisors.

(d) Any person holding the office of city attorney or the office of assistant city attorney, whether employed, appointed, or elected, is excluded from the definition of "elective officer" as defined in subdivision (b). This subdivision shall apply only to persons first employed, elected, or appointed on or after July 1, 1994, or following any break in state service while serving in the office if the office was held on June 30, 1994.

(e) In accordance with Section 20125 the board shall be the sole judge of which elected or appointed positions qualify the incumbent as an "elective officer" in this system under this section.

(f) Notwithstanding any other provision of law, with respect to elective officers of contracting agencies, payment by a contracting agency of employer contributions and any other amounts for employer paid benefits under this system shall not be construed as receipt of salary or compensation by the elective officer for purposes of any statutory salary or compensation limitation.

SEC. 7. Section 20398 of the Government Code is amended to read:

20398. "State peace officer/firefighter member" also includes:

(a) State officers and employees designated as peace officers as defined in Sections 830.1, 830.2, 830.3, 830.38, 830.4, and 830.5 of the Penal Code, except a patrol member, or a firefighter whose principal duties consist of active firefighting/fire suppression, who is either excluded from the definition of state employee in subdivision (c) of Section 3513 or is a nonelected officer or employee of the executive branch of government who is not a member of the civil service, provided, that those officers and employees have responsibility for the direct supervision of state peace officer/firefighter personnel specified in Sections 20391, 20392, 20393, and 20395. The Department of Personnel Administration shall annually determine which classes meet the above conditions and are not classes specified in Sections 20391, 20392, 20393, and 20395, and report its findings to the Legislature and to this system, to be effective July 1 of each year.

(b) Members who are reclassified pursuant to this section may file an irrevocable election to remain subject to their prior retirement formula and the corresponding rate of contributions. The Director of Corrections may, upon appointment to that office on or after January 1, 1999, file an irrevocable election to be subject to the industrial formula and the corresponding rate of contributions. The elections must be filed within 90 days of notification by the board. Members who so elect shall be subject to the reduced benefit factor specified in Section 21353 only for the service included in the federal system.

SEC. 8. Section 20403 of the Government Code is amended to read:

20403. "State safety member" shall also include officers and employees in (a) the Department of Corrections employed to perform the duties now performed in positions with the following class titles: Deputy Director, Department of Corrections; Deputy Director, Institutions, Camps and Program Services Division; Deputy Director, Parole and Community Services; Warden; Warden—San Quentin; Superintendent II and III, Department of Corrections; Deputy Superintendent; Correctional Administrator; Program Administrator, Correctional Institution; all classes of Correctional Program Supervisor; Correctional Captain; Correctional Lieutenant; Correctional Sergeant; Correctional Officer; all classes of Women's Correctional Supervisor; Assistant Deputy Director, Parole and Community Services; all classes of Parole Administrator, Adult Parole; all classes of Parole Agent, Adult Parole; Assistant Director, Investigations and Law Enforcement Liaison; Senior Special Agent; Special Agent; all classes of Women's Parole Agent; Medical Facility Superintendent; Superintendent, California Institution for Women; all classes of Correctional Counselor; Chief and Assistant Chief Transportation Officer, (b) the Department of the Youth Authority employed to perform the duties now performed in positions with the following class titles: Director, Department of the Youth Authority; Chief, Division of Parole and Community Services; Deputy Chief, Division of Parole and Community Services; Program Administrator, Correctional School; Assistant Superintendent, Correctional School; all classes of Superintendent, Correctional School; Youth Authority Camp Superintendent; Assistant Superintendent, Youth Authority Camp; Chief, Division of Institutions; Treatment Team Supervisor; all classes of Transportation Officers, Youth Authority; Security Officer; all classes of Group Supervisors; all classes of Parole Agent, Youth Authority; all classes of Youth Counselor; Supervisor Community Treatment Programs; Correctional Casework Training Supervisor; Correctional Casework Trainee; all classes of Correctional Counselor, (c) the Board of Prison Terms employed to perform duties now performed in positions with the following class titles: all classes of Parole Agent; all classes of Correctional Counselor and the Chief of Investigation, (d) the Youthful Offender Parole Board employed to perform duties now performed in positions with the following class titles: all classes of Parole Agent, and (e) the Prison Industry Authority employed to perform duties now performed in positions with the following class titles: General Manager; Assistant General Manager, Administration and Marketing Branch; Chief, Industry Implementation Division; and Activation Manager.

SEC. 9. Section 20575 of the Government Code is amended to read:

20575. Notwithstanding any other provision of this part to the contrary, upon request of a terminating agency, the board shall enter into an agreement with the governing body of a terminating agency

in order to ensure that (a) the final compensation used in the calculation of benefits of its employees shall be calculated in the same manner as the benefits of employees of agencies that are not terminating, regardless of whether they retire directly from employment with the terminating agency or continue in other public service; and (b) related necessary adjustments in the employer's contribution rate are made, from time to time, by the board prior to the date of termination to ensure that benefits are adequately funded or any other actuarially sound payment technique, including a lump-sum payment at termination, is agreed to by the governing body of the terminating agency and the board.

The terminating agency that will cease to exist shall notify the board not sooner than three years nor later than one year prior to its termination date of its intention to enter into agreement pursuant to this section. The terms of the agreement shall be reflected in an amendment to the agency's contract with the board.

If the board, itself, determines that it is not in the best interests of the system, it may choose not to enter into an agreement pursuant to this section.

SEC. 10. Section 20578 of the Government Code is amended to read:

20578. Notwithstanding any other provision of law, on and after January 1, 1991, the rights and benefits of a former employee of a contracting agency which terminated on or before January 1, 1991, or of his or her beneficiary, shall be the same as if the agency had continued as a contracting agency. Any monthly allowance of that individual, or of his or her beneficiary, that was reduced pursuant to Section 20577 because the contracting agency failed to pay the board the amount of the difference, shall not be subject to continued reduction on or after January 1, 1991. As of January 1, 1991, benefits shall be paid at the level provided in the contract prior to that reduction. However, if a former employee of a contracting agency that terminated on or before January 1, 1991, becomes employed by another covered employer after the date of termination, including an employer subject to reciprocity, the benefits shall be calculated by using the highest compensation earned by the individual.

In accordance with Section 20580, an individual who has withdrawn his or her accumulated contributions from the terminated agency shall not be permitted to redeposit any withdrawn contributions upon again becoming a member of this system.

All assets and liabilities of contracting agencies which have terminated shall be pooled into a single account to provide exclusively for the payment of benefits. All benefits shall be reduced proportionally pursuant to Section 20577 prior to the transfer of assets to the pool if the amount of the terminating agency's assets are less than the actuarial equivalent described in clause (1) of Section 20576 and if the agency fails to pay the difference.

SEC. 11. Section 20636 of the Government Code is amended to read:

20636. (a) "Compensation earnable" by a member means the payrate and special compensation of the member, as defined by subdivisions (b), (c), and (g), and as limited by Section 21752.5.

(b) (1) "Payrate" means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours. "Payrate" for a member who is not in a group or class means the monthly rate of pay or base pay of the member, paid in cash and pursuant to publicly available pay schedules, for services rendered on a full-time basis during normal working hours, subject to the limitations of paragraph (2) of subdivision (e).

(2) The computation for any leave without pay of a member shall be based on the compensation earnable by him or her at the beginning of the absence.

(3) The computation for time prior to entering state service shall be based on the compensation earnable by him or her in the position first held by him or her in state service.

(c) (1) Special compensation of a member includes any payment received for special skills, knowledge, abilities, work assignment, workdays or hours, or other work conditions.

(2) Special compensation shall be limited to that which is received by a member pursuant to a labor policy or agreement or as otherwise required by state or federal law, to similarly situated members of a group or class of employment that is in addition to payrate. If an individual is not part of a group or class, special compensation shall be limited to that which the board determines is received by similarly situated members in the closest related group or class that is in addition to payrate, subject to the limitations of paragraph (2) of subdivision (e).

(3) Special compensation shall be for services rendered during normal working hours and, when reported to the board, the employer shall identify the pay period in which the special compensation was earned.

(4) Special compensation may include the full monetary value of normal contributions paid to the board by the employer, on behalf of the member and pursuant to Section 20691, provided that the employer's labor policy or agreement specifically provides for the inclusion of the normal contribution payment in compensation earnable.

(5) The monetary value of any service or noncash advantage furnished by the employer to the member, except as expressly and specifically provided in this part, shall not be special compensation unless regulations promulgated by the board specifically determine that value to be "special compensation."

(6) The board shall promulgate regulations that delineate more specifically and exclusively what constitutes "special compensation" as used in this section. A uniform allowance, the monetary value of employer-provided uniforms, holiday pay, and premium pay for hours worked within the normally scheduled or regular working hours that are in excess of the statutory maximum workweek or work period applicable to the employee under Section 201 et seq. of Title 29 of the United States Code shall be included as special compensation and appropriately defined in those regulations.

(7) Special compensation does not include any of the following:

(A) Final settlement pay.

(B) Payments made for additional services rendered outside of normal working hours, whether paid in lump sum or otherwise.

(C) Any other payments the board has not affirmatively determined to be special compensation.

(d) Notwithstanding any other provision of law, payrate and special compensation schedules, ordinances, or similar documents shall be public records available for public scrutiny.

(e) (1) As used in this part, "group or class of employment" means a number of employees considered together because they share similarities in job duties, work location, collective bargaining unit, or other logical work related grouping. Under no circumstances shall one employee be considered a group or class.

(2) Increases in compensation earnable granted to any employee who is not in a group or class shall be limited during the final compensation period applicable to the employees, as well as the two years immediately preceding the final compensation period, to the average increase in compensation earnable during the same period reported by the employer for all employees who are in the same membership classification, except as may otherwise be determined pursuant to regulations adopted by the board that establish reasonable standards for granting exceptions.

(f) As used in this part, "final settlement pay" means any pay or cash conversions of employee benefits that are in excess of compensation earnable, that are granted or awarded to a member in connection with or in anticipation of a separation from employment. The board shall promulgate regulations that delineate more specifically what constitutes final settlement pay.

(g) (1) Notwithstanding subdivision (a), "compensation earnable" for state members means the average monthly compensation, as determined by the board, upon the basis of the average time put in by members in the same group or class of employment and at the same rate of pay, and is composed of the payrate and special compensation of the member. The computation for any absence of a member shall be based on the compensation earnable by him or her at the beginning of the absence and that for time prior to entering state service shall be based on the

compensation earnable by him or her in the position first held by him or her in that state service.

(2) Notwithstanding subdivision (b), "payrate" for state members means the average monthly remuneration paid in cash out of funds paid by the employer to similarly situated members of the same group or class of employment, in payment for the member's services or for time during which the member is excused from work because of holidays, sick leave, vacation, compensating time off, or leave of absence. "Payrate" for state members shall include:

(A) Any amount deducted from a member's salary for any of the following:

(i) Participation in a deferred compensation plan established pursuant to Chapter 4 (commencing with Section 19993) of Part 2.6.

(ii) Payment for participation in a retirement plan that meets the requirements of Section 401(k) of Title 26 of the United States Code.

(iii) Payment into a money purchase pension plan and trust that meets the requirements of Section 401(a) of Title 26 of the United States Code.

(iv) Participation in a flexible benefits program.

(B) Any payment in cash by the member's employer to one other than an employee for the purpose of purchasing an annuity contract for a member under an annuity plan that meets the requirements of Section 403(b) of the Internal Revenue Code.

(C) Employer "pick up" of member contributions that meets the requirements of Section 414(h)(2) of Title 26 of the United States Code.

(D) Any disability or workers' compensation payments to safety members in accordance with Section 4800 of the Labor Code.

(E) Temporary industrial disability payments pursuant to Article 4 (commencing with Section 19869) of Chapter 2.5 of Part 2.6.

(F) Any other payments the board may determine to be within "payrate."

(3) Notwithstanding subdivision (c), "special compensation" for state members shall mean all of the following:

(A) The monetary value, as determined by the board, of living quarters, board, lodging, fuel, laundry, and other advantages of any nature furnished a member by his or her employer in payment for the member's services.

(B) Any compensation for performing normally required duties, such as holiday pay, bonuses (for duties performed on regular work shift), educational incentive pay, maintenance and noncash payments, out-of-class pay, marksmanship pay, hazard pay, motorcycle pay, paramedic pay, emergency medical technician pay, POST certificate pay, and split shift differential.

(C) Compensation for uniforms, except as provided in Section 20632.

(D) Any other payments the board may determine to be within "special compensation."

(4) Neither "payrate" nor "special compensation" for state members shall include any of the following:

(A) The provision by the state employer of any medical or hospital service or care plan or insurance plan for its employees (other than the purchase of annuity contracts as described below in this subdivision), any contribution by the employer to meet the premium or charge for such a plan, or any payment into a private fund to provide health and welfare benefits for employees.

(B) Any payment by the state employer of the employee portion of taxes imposed by the Federal Insurance Contribution Act.

(C) Amounts not available for payment of salaries and that are applied by the employer for the purchase of annuity contracts including those that meet the requirements of Section 403(b) of the Internal Revenue Code.

(D) Any benefits paid pursuant to Article 5 (commencing with Section 19878) of Chapter 2.5 of Part 2.6.

(E) Employer payments that are to be credited as employee contributions for benefits provided by this system, or employer payments that are to be credited to employee accounts in deferred compensation plans; provided, that the amounts deducted from a member's wages for participation in a deferred compensation plan shall not be considered to be "employer payments."

(F) Payments for unused vacation, annual leave, personal leave, sick leave, or compensating time off, whether paid in lump sum or otherwise.

(G) Final settlement pay.

(H) Payments for overtime, including pay in lieu of vacation or holiday.

(I) Compensation for additional services outside regular duties, such as standby pay, callback pay, court duty, allowance for automobiles, and bonuses for duties performed after the member's regular work shift.

(J) Amounts not available for payment of salaries and which are applied by the employer for any of the following:

(i) The purchase of a retirement plan which meets the requirements of Section 401(k) of Title 26 of the United States Code.

(ii) Payment into a money purchase pension plan and trust which meets the requirements of Section 401(a) of Title 26 of the United States Code.

(K) Payments made by the employer to or on behalf of its employees who have elected to be covered by a flexible benefits program, where those payments reflect amounts that exceed the employee's salary.

(L) Any other payments the board may determine are not "payrate" or "special compensation."

(5) If the provisions of this subdivision, including the board's determinations pursuant to subparagraph (F) of paragraph (2) and subparagraph (D) of paragraph (3), are in conflict with the

provisions of a memorandum of understanding reached pursuant to Section 3517.5 or 3560, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, those provisions shall not become effective unless approved by the Legislature in the annual Budget Act. No memorandum of understanding reached pursuant to Section 3517.5 or 3560 may exclude from the definition of either "payrate" or "special compensation" a member's base salary payments or payments for time during which the member is excused from work because of holidays, sick leave, vacation, compensating time off, or leave of absence. If any items of compensation earnable are included by memorandum of understanding as "payrate" or "special compensation" for retirement purposes for represented and higher education employees pursuant to this paragraph, the Department of Personnel Administration or the Trustees of the California State University shall obtain approval from the board for that inclusion.

(6) (A) Subparagraph (B) of paragraph (3) of this subdivision prescribes that compensation earnable includes any compensation for performing normally required duties, such as holiday pay, bonuses (for duties performed on regular work shift), educational incentive pay, maintenance and noncash payments, out-of-class pay, marksmanship pay, hazard pay, motorcycle pay, paramedic pay, emergency medical technician pay, POST certificate pay, and split shift differential; and includes compensation for uniforms, except as provided in Section 20632; and subparagraph (I) of paragraph (4) excludes from compensation earnable compensation for additional services outside regular duties, such as standby pay, callback pay, court duty, allowance for automobile, and bonuses for duties performed after regular work shift.

(B) Notwithstanding subparagraph (A) of this paragraph, the Department of Personnel Administration shall determine which payments and allowances that are paid by the state employer shall be considered compensation for retirement purposes for any employee who either is excluded from the definition of state employee in subdivision (c) of Section 3513, or is a nonelected officer or employee of the executive branch of government who is not a member of the civil service.

(C) Notwithstanding subparagraph (A) of this paragraph, the Trustees of the California State University shall determine which payments and allowances that are paid by the trustees shall be considered compensation for retirement purposes for any managerial employee, as defined in subdivision (*l*) of Section 3562, or supervisory employee as defined in Section 3580.3.

SEC. 12. Section 21493 of the Government Code is amended to read:

21493. (a) If a person had no beneficiary designation in effect on the date of death, any benefit payable shall be paid to the survivors of the person in the following order:

(1) The decedent's spouse.

(2) The decedent's natural or adopted children, including a natural child adopted by another who meets the following criteria:

(A) The natural parent and adopted child lived together at any time as parent and child or the natural parent was married to or was cohabiting with the other natural parent at the time the child was conceived and died before the birth of the child; and

(B) The child was adopted by the spouse of either of the natural parents or after the death of either of the natural parents or the child is a natural child adopted by another as that phrase is defined or construed by the Probate Code.

(3) The decedent's parents.

(4) The decedent's brothers and sisters.

(b) If a deceased person had no effective beneficiary designation and there are no survivors in the groups specified in subdivision (a) who are entitled to the benefit under this section, the benefit shall be paid to the estate of the decedent, if the estate is either probated or subject to probate. Any benefit payable by this system may be paid either to the estate or to the duly authorized representative or representatives of the estate upon receipt by this system of a court order appointing an executor, administrator, or personal representative.

(c) If there are no survivors in the groups specified in subdivision (a) and the estate of the person described in subdivision (b) does not require probate, irrespective of whether probate is filed, the benefit shall be paid directly to the decedent's trust.

(d) If there are no survivors in the groups specified in subdivision (a) and the estate of the person described by subdivision (b) does not require probate, irrespective of whether probate is filed, and the decedent has not established a trust as described by subdivision (c), the benefit shall be paid directly to the surviving next of kin in the following order.

(1) Stepchildren.

(2) Grandchildren, including stepgrandchildren.

(3) Nieces and nephews.

(4) Great grandchildren.

(5) Cousins.

(e) For purposes of determining the application of subdivisions (b), (c), and (d) the amount of the benefit payable from this system shall not be included in calculating the worth of the estate.

(f) For purposes of this section, the term "stepchild" shall mean a person who had a regular parent-child relationship with the deceased person.

SEC. 13. Section 21752 of the Government Code is amended to read:

21752. (a) (1) In accordance with Section 21756, a member's annual retirement benefits, adjusted to the actuarial equivalent of a straight-life annuity if payable in a form other than a straight-life annuity or a qualified joint and survivor annuity as provided under Section 21460, and determined without regard to any employee contributions or rollover contributions, as defined in Sections 402(a)(5), 403(a)(4), and 408(d)(3)) of Title 26 of the United States Code, otherwise payable to the member under Part 3 (commencing with Section 20000) and under any other defined benefit plan maintained by the employer that is subject to Section 415 of Title 26 of the United States Code, shall not exceed, in the aggregate, the dollar limit applicable pursuant to Section 415(b)(1)(A) of Title 26 of the United States Code; as appropriately modified by Section 415(b)(2)(F) and (G) of Title 26 the United States Code.

(2) However, the annual retirement benefit payable to a member shall be deemed not to exceed the limitations prescribed in paragraph (1) if the benefit does not exceed ten thousand dollars ($10,000) and the member has at no time participated in a tax qualified defined contribution plan maintained by the employer.

(b) These limitations shall be applied pursuant to Section 415(b)(10) of the Title 26 of the United States Code.

(c) Part 3 (commencing with Section 20000) shall be construed as if it included this section.

SEC. 14. Section 21757 of the Government Code is amended to read:

21757. (a) If the retirement benefits of any member or his or her survivors or beneficiaries would be limited by Section 415 of Title 26 of the United States Code, the board shall adjust the payment of benefits pursuant to Part 3 (commencing with Section 20000), including, but not limited to, cost-of-living adjustments, cost-of-living banks, temporary annuities, survivor continuance benefits or any combinations thereof in order to maximize benefits within the limits of Section 415.

(b) The board shall establish a program of replacement benefits for members and any survivors or beneficiaries whose retirement benefits are limited by Section 415 and cannot be fully maximized pursuant to Part 3. The benefits provided by that program may consist of deferred compensation, cash payments, health benefits, or supplemental disability benefits, as shall be determined by the board to give effect to the purpose of this part. The factors the board may take into consideration in making its determination shall include, but not be limited to, the following: legal constraints, administrative feasibility, and cost-effectiveness. The board may periodically modify the replacement benefits program and may add or eliminate any type of replacement benefits, as necessary, to carry out the purpose of this part. The administrative costs of the replacement benefits program shall be satisfied out of funds credited to the accounts of the

participant members, and shall not be paid from the retirement fund or the retirement trust fund of a participating agency.

(c) The application of Section 415 to benefits provided under Part 3 and this part shall not be taken into account for purposes of determining employers' or employees' contribution rates, until replacement benefits are implemented pursuant to Section 21758.

(d) Under no circumstances shall the replacement benefit program result in increased benefit costs to an employer, member, or annuitant.

SEC. 15. Section 22013 of the Government Code is amended to read:

22013. "Policeman" as used in this part includes members of the California Highway Patrol, state safety members of the Public Employees' Retirement System employed by the Department of Justice, sheriffs, undersheriffs, deputy sheriffs, marshals and deputy marshals, and any other employee of a public agency other than the state or University of California in a position designated as a policeman's position by the board for the purposes of Section 218(d)(5)(A) of the Social Security Act.

SEC. 16. Section 22013.1 of the Government Code is amended to read:

22013.1. "Policeman" as used in this part also includes persons employed in the Department of Fish and Game in connection with its warden service, whose principal duties consist of active law enforcement service, including immediate supervision by persons employed to perform the duties now performed under the titles of chief and assistant chief of warden service, and captain of patrol boats for the purposes of Section 218(d)(5)(A) of the Social Security Act.

SEC. 17. Section 22013.3 of the Government Code is amended to read:

22013.3. "Policeman" as used in this part also includes persons employed in positions set forth in Section 20403 for the purposes of Section 218(d)(5)(A) of the Social Security Act.

SEC. 18. Section 22013.4 of the Government Code is amended to read:

22013.4. "Policeman" as used in this part also includes persons designated by Section 31470.6 as persons whose principal duties consist of "active law enforcement" for the purposes of Section 218(d)(5)(A) of the Social Security Act.

SEC. 19. Section 22013.6 of the Government Code is amended to read:

22013.6. "Policeman" as used in this part also includes persons employed in positions set forth in Sections 20438 and 31469.4 for the purposes of Section 218(d)(5)(A) of the Social Security Act.

This section shall be operative only in counties which elect to terminate the social security coverage of county probation officers and juvenile hall employees in that county and elect to include such

officers and employees within the safety membership retirement category.

SEC. 20. Section 22013.7 of the Government Code is amended to read:

22013.7. "Policeman" or "fireman," as used in this part, also includes persons employed in positions set forth in Section 20414 for the purposes of Section 218(d)(5)(A) of the Social Security Act (42 U.S.C. Sec. 418(d)(5)(A)).

SEC. 20.5. Section 22013.7 of the Government Code is amended to read:

22013.7. "Policeman" or "fireman," as used in this part, also includes persons employed in positions set forth in Sections 20403.5 and 20414 for the purposes of Section 218(d)(5)(A) of the Social Security Act (42 U.S.C. Sec. 418(d)(5)(A)).

SEC. 21. Section 22013.75 of the Government Code is amended to read:

22013.75. "Policeman," as used in this part, also includes persons employed in positions identified in Section 20407 for the purposes of Section 218(d)(5)(A) of the Social Security Act (42 U.S.C. Sec. 418(d)(5)(A)).

SEC. 22. Section 22013.76 of the Government Code is amended to read:

22013.76. "Policeman," as used in this part, also includes persons employed in positions identified in Section 20408 for the purposes of Section 218(d)(5)(A) of the Social Security Act (42 U.S.C. Sec. 418(d)(5)(A)).

SEC. 23. Section 22013.8 of the Government Code, as amended by Chapter 88 of the Statutes of 1998, is amended to read:

22013.8. "Policeman" as used in this part also includes persons employed in classifications listed in Sections 20405 and 20405.1, for the purposes of Section 218(d)(5)(A) of the Social Security Act (42 U.S.C. Sec. 418(d)(5)(A)).

SEC. 24. Section 22013.82 of the Government Code, as added by Chapter 91 of the Statutes of 1998, is amended to read:

22013.82. "Policeman" as used in this part also includes persons employed in classifications listed in Section 20405.3, for the purposes of Section 218(d)(5)(A) of the Social Security Act (42 U.S.C. Sec. 418(d)(5)(A)).

SEC. 25. Section 22013.85 of the Government Code is amended to read:

22013.85. "Policeman" as used in this part also includes persons employed in the classification listing in Section 20411 for the purposes of Section 218(d)(5)(A) of the Social Security Act.

SEC. 26. Section 22013.9 of the Government Code is amended to read:

22013.9. "Policeman" as used in this part also includes persons employed in positions set forth in Section 20406 for the purposes of Section 218(d)(5)(A) of the Social Security Act.

SEC. 27. Section 22013.95 of the Government Code is amended to read:

22013.95. "Policeman" or "fireman," as used in this part, also includes persons employed in positions set forth in Section 20393 for the purposes of Section 218(d)(5) (A) of the Social Security Act (42 U.S.C. Sec. 418(d)(5)(A)).

SEC. 28. Section 22013.955 of the Government Code is amended to read:

22013.955. "Policeman" as used in this part also includes persons employed in the classifications set forth in Section 20397 for the purposes of Section 218(d)(5)(A) of the Social Security Act.

SEC. 29. Section 22013.96 of the Government Code is amended to read:

22013.96. "Policeman" or "fireman," as used in this part, also includes persons employed in positions set forth in Section 20395, as amended in 1984 for the purposes of Section 218(d)(5)(A) of the Social Security Act (42 U.S.C. Sec. 418(d)(5)(A)).

SEC. 30. Section 22013.97 of the Government Code is amended to read:

22013.97. "Policeman" or "fireman," as used in this part, also includes persons employed in positions set forth in Sections 20398 for the purposes of Section 218(d)(5)(A) of the Social Security Act (42 U.S.C. Sec. 418(d)(5)(A)).

SEC. 31. Section 22013.10 of the Government Code is amended to read:

22013.10. "Policeman" as used in this part, also includes persons employed in positions set forth in Section 20415 for the purposes of Section 218(d)(5)(A) of the Social Security Act (42 U.S.C. Sec. 418(d)(5)(A)).

SEC. 32. Section 22013.11 of the Government Code is amended to read:

22013.11. "Policeman" or "fireman," as used in this part, also includes persons employed in positions set forth in Sections 20409 and 20410 for the purposes of Section 218(d)(5)(A) of the Social Security Act (42 U.S.C. Sec. 418(d)(5)(A)).

SEC. 33. Section 22014 of the Government Code is amended to read:

22014. "Fireman" as used in this part means any employee of the Division of Forestry, Department of Conservation, employed to perform duties now performed under the following titles: State Forester; all classes of rangers; all classes of deputy state foresters; all classes of fire prevention and law enforcement officers; all classes of foresters; all classes of forestry foreman; all classes of forestry trainees; all classes of forestry equipment and civil engineers; forestry superintendent, conservation camps; forest firetruck driver; forestry fireman; forest firefighter; equipment maintenance foreman or forestry equipment operator; or employed in any other position the principal duties of which consist of active fire suppression, and any

employee of a public agency other than the state or University of California in a position designated as a fireman's position by the board for the purposes of Section 218(d)(5)(A) of the Social Security Act.

SEC. 34. Section 22014.1 of the Government Code is amended to read:

22014.1. "Fireman" as used in this part also means any officer or employee of a county having a population in excess of 5,000,000 who is employed by the forestry division of the county fire department and whose principal duties consist of active fire suppression for the purposes of Section 218(d)(5)(A) of the Social Security Act.

SEC. 35. Section 22014.5 of the Government Code is amended to read:

22014.5. "Fireman" as used in this part includes persons employed as "campus firefighter" and other persons employed in positions described in Section 20412 for the purposes of Section 218(d)(5)(A) of the Social Security Act.

SEC. 36. Section 20.5 of this bill incorporates amendments to Section 22013.7 of the Government Code proposed by both this bill and AB 1596. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 22013.7 of the Government Code, and (3) this bill is enacted after AB 1596, in which case Section 20 of this bill shall not become operative.

CHAPTER 679

An act to add Section 4420.8 to the Government Code, relating to public works.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 4420.8 is added to the Government Code, to read:

4420.8. (a) Notwithstanding subdivision (b) of Section 4420, commencing January 1, 1999, a state agency may utilize owner-controlled or wrap-up insurance programs if all of the following conditions are met:

(1) The total cost of the public works project is over one hundred twenty-five million dollars ($125,000,000).

(2) The program maintains completed operation coverage for a term for which the Insurance Commissioner has determined that coverage is reasonably commercially available, but in no event less than three years.

(3) Bid specifications clearly specify for all bidders the insurance coverage provided under the program, and minimum safety requirements that must be met.

(4) The program does not prohibit a contractor or subcontractor from purchasing any additional insurance coverage that a contractor or subcontractor believes is necessary to protect themselves from any liability arising out of the contract.

(5) The program does not include surety insurance.

(b) Safety requirements for a public works project subject to this subdivision may be developed jointly between a state agency and the prime contractor. In the event that a state agency requires a safety program different than the prime contractor's usual and customary program, the program shall be mutually agreed upon, taking into account the prime contractor's experience, expertise, existing labor agreements relating to safety issues, and any unique safety issues relating to the project.

(c) This subdivision shall not affect any provision in a collective bargaining agreement specified in Section 3201.5 of the Labor Code that is submitted by the prime contractor with its construction bid.

(d) For purposes of this section, "owner-controlled or wrap-up insurance" means a series of insurance policies issued to cover all of the contractors and subcontractors on a given project for purposes of general liability and workers' compensation.

(e) For purposes of this section, "public works project" means construction being performed at one site or at a series of contiguous sites separated only by a street, roadway, waterway, or railroad right-of-way, or along a continuous system for the provision of water and power.

CHAPTER 680

An act to amend Sections 16521, 18932.1, 18942, 18962, 18973, 18975, 18976, 18980, 18982, 18983, 19000, 19001, 19002, 19012, 19017, 19032, 19038, 19242, 19262, 19302, 20722, 20723, and 20797 of, to amend the headings of Article 5 (commencing with Section 18980) and Article 7 (commencing with Section 19000) of Chapter 4.1 of Part 3 of Division 9 of, to add Sections 16527 and 18942.2 to, and to repeal Sections 19223, 21739, and 21740 of, the Food and Agricultural Code, relating to animals.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 16521 of the Food and Agricultural Code is amended to read:

16521. (a) An inspector shall seize any bovine animal, horse, mule, or burro, or the hide or carcass of any of those animals, that is within any of the following classes:

(1) Found in the possession of a person who does not also have in his or her possession proof of ownership.

(2) Presented for inspection and that is not claimed by the consignor or consignee.

(3) An estray as defined in Section 17001.5.

(b) At the time of seizure, the person from whom the animal is seized shall be given a notice of rights under this chapter.

SEC. 2. Section 16527 is added to the Food and Agricultural Code, to read:

16527. An animal, hide, or carcass seized pursuant to this chapter shall be disposed of pursuant to Chapter 7 (commencing with Section 17001).

SEC. 3. Section 18932.1 of the Food and Agricultural Code is amended to read:

18932.1. Any person that violates any provision of this chapter, or any regulation that is issued pursuant to it, is liable civilly for a penalty not to exceed five hundred dollars ($500) for each such violation. If the court finds that a violation of this chapter was a serious violation, or that the violation is a second or subsequent violation, the person is civilly liable for a penalty not to exceed fifteen thousand dollars ($15,000) for each violation. Any money that is received pursuant to this section, less associated investigative and legal costs incurred by the department, shall be deposited in the General Fund.

SEC. 4. Section 18942 of the Food and Agricultural Code is amended to read:

18942. "Licensed livestock meat inspector" means a person who is licensed by the department to perform inspection functions under this chapter in custom livestock slaughterhouses.

SEC. 5. Section 18942.2 is added to the Food and Agricultural Code, to read:

18942.2. "Licensed processing inspector" means a person who is licensed by the department to perform inspection functions under this chapter in licensed meat processing establishments.

SEC. 6. Section 18962 of the Food and Agricultural Code is amended to read:

18962. The department may adopt, by regulation, provisions to examine applicants for the positions of licensed livestock meat inspector and licensed processing inspector.

SEC. 7. Section 18973 of the Food and Agricultural Code is amended to read:

18973. (a) Licensed livestock meat inspectors, licensed processing inspectors, and department inspectors are authorized to supervise the operations of licensed establishments, to order the establishments not to operate until required standards are met, and to cease operations when the standards are violated. These persons

are also authorized to require withholding from movement, sale, or the delivery of products that may be unfit, because the products were derived from unfit animals or processed in unsanitary conditions and to require denaturing and condemnation of the unfit products.

(b) The department may immediately withdraw or refuse to provide inspection services to any establishment under this chapter that fails to cease operations, hold any retained product, or destroy any condemned product in accordance with the order of a department inspector or licensed livestock meat inspector or licensed processing inspector. It is unlawful to violate any such order.

SEC. 8. Section 18975 of the Food and Agricultural Code is amended to read:

18975. If an action of a livestock meat inspector, licensed processing inspector, or department inspector in condemning any livestock or poultry product is questioned, appeal by the licensed establishment operator may be made to the immediate supervisor of the inspector and from his or her decision appeal may be made to the Chief of the Meat and Poultry Inspection Branch. The operator shall abide by the decision of the inspector until or unless the decision is modified by the supervisor or the chief.

SEC. 9. Section 18976 of the Food and Agricultural Code is amended to read:

18976. If slaughtering, carcass preparation, or processing of any meat, meat products, poultry, or poultry products, or training of licensed livestock meat inspectors or licensed processing inspectors is conducted in an establishment licensed under Article 8 (commencing with Section 19010) during hours considered overtime for state employees or on legal holidays, the owner or operator of the establishment, by contract or agreement with the department, shall pay the additional costs for salaries and expenses for persons employed by the department, as determined by the department, to conduct the necessary inspection work or training during the overtime period.

SEC. 9.5. The heading of Article 5 (commencing with Section 18980) of Chapter 4.1 of Part 3 of Division 9 of the Food and Agricultural Code is amended to read:

Article 5. Livestock Meat Inspector and Processing Inspector Licenses—General Provisions

SEC. 10. Section 18980 of the Food and Agricultural Code is amended to read:

18980. (a) The application fee for a livestock meat inspector's license or a processing inspector's license is twenty-five dollars ($25). If an applicant for a license does not take the examination within one year after the date of the receipt of the application by the department, the application expires. Reexamination requires the payment of an additional application fee.

(b) Each license shall expire on the last day of the calendar year for which it is issued. The fee shall not be prorated.

SEC. 11. Section 18982 of the Food and Agricultural Code is amended to read:

18982. The department shall conduct periodic training for licensed livestock meat inspectors and licensed processing inspectors to maintain and increase their competence in the performance of their official duties.

SEC. 12. Section 18983 of the Food and Agricultural Code is amended to read:

18983. Licensed livestock meat inspectors and licensed processing inspectors shall participate in annual training meetings sponsored by the department to maintain and increase their competence in the performance of their official duties. Failure to participate may be a cause to revoke their license.

SEC. 12.5. The heading of Article 7 (commencing with Section 19000) of Chapter 4.1 of Part 3 of Division 9 of the Food and Agricultural Code is amended to read:

Article 7. Processing Inspector License—Meat Processing Establishment

SEC. 13. Section 19000 of the Food and Agricultural Code is amended to read:

19000. Each person, before acting as a licensed livestock meat processing inspector in a retail meat processing establishment, shall apply to the department and receive from the department a license after passing an examination and a demonstration that shows the applicant's ability to understand laws and regulations that pertain to meat inspection and a practical knowledge of all the following:

(a) Conditions that affect adulteration, misbranding, and wholesomeness of livestock and poultry products.

(b) Sanitary meat and poultry processing procedures.

(c) Sanitation of the facilities and the equipment used in retail meat processing establishments.

SEC. 14. Section 19001 of the Food and Agricultural Code is amended to read:

19001. (a) A licensed processing inspector shall conduct a sanitation inspection before the establishment commences operations for the day, and shall make periodic inspections throughout the day.

(b) The licensed processing inspector shall order the establishment not to begin operations or to cease operations at any time that the establishment sanitation fails to meet the requirements of this chapter and the regulations adopted thereunder, or at any time any product is not handled, retained, condemned, or disposed of in violation of this chapter or the regulations thereunder.

(c) The licensed processing inspector shall direct the application of the mark of inspection as provided by regulations on products that are inspected by him or her and found to be wholesome, not adulterated, and derived from United States Department of Agriculture inspected carcasses.

SEC. 15. Section 19002 of the Food and Agricultural Code is amended to read:

19002. The department may suspend or revoke the license of a licensed processing inspector for permitting the processing or labeling of products not meeting the requirements provided for in this article.

SEC. 16. Section 19012 of the Food and Agricultural Code is amended to read:

19012. No person shall operate a licensed establishment performing the functions stated in this chapter unless all livestock and livestock products are inspected for wholesomeness and the facilities are inspected for sanitation by a licensed livestock meat inspector or a licensed processing inspector.

SEC. 17. Section 19017 of the Food and Agricultural Code is amended to read:

19017. It is unlawful to do any of the following:

(a) Operate an establishment not licensed by the department.

(b) Operate an establishment that is not clean.

(c) Operate an establishment in a manner or under conditions that are not sanitary.

(d) Operate an establishment that does not meet the sanitary building or equipment standards pursuant to the regulations of this chapter.

(e) Operate an establishment in violation of an order of a licensed livestock meat inspector, licensed processing inspector, or a department inspector.

(f) Dispose of condemned and inedible livestock carcasses or parts of livestock products in violation of this chapter or the regulations thereunder.

(g) Misbrand or mislabel livestock and poultry products.

SEC. 18. Section 19032 of the Food and Agricultural Code is amended to read:

19032. Any person that violates any provision of this chapter, or any regulation that is issued pursuant to it, is liable civilly for a penalty in an amount not to exceed five hundred dollars ($500) for each such violation. If the court finds that the violation of this chapter was a serious violation, or that the violation is a second or subsequent violation, the person is liable civilly for a penalty not to exceed fifteen thousand dollars ($15,000) for each such violation. Any money that is recovered pursuant to this section, less associated investigative and legal costs incurred by the department, shall be deposited in the General Fund.

SEC. 19. Section 19038 of the Food and Agricultural Code is amended to read:

19038. It is unlawful for any person knowingly to represent that an article has been examined by a licensed livestock meat inspector, licensed processing inspector, or department inspector or exempted under this chapter when in fact it has respectively not been so examined or exempted.

SEC. 20. Section 19223 of the Food and Agricultural Code is repealed.

SEC. 21. Section 19242 of the Food and Agricultural Code is amended to read:

19242. The secretary, after notice and hearing, shall refuse to issue a license unless he or she finds that the applicant satisfies all of the following:

(a) Is qualified to operate a slaughterhouse.

(b) Is properly equipped to engage in the business of slaughtering in a clean and sanitary manner.

(c) Has never been convicted of a felony involving adulterated or misbranded food.

SEC. 22. Section 19262 of the Food and Agricultural Code is amended to read:

19262. The secretary, after notice and hearing, shall refuse to issue a license unless he or she finds that the applicant satisfies all of the following:

(a) Is qualified to operate a processing plant.

(b) Is properly equipped to engage in the business of processing in a clean and sanitary manner.

(c) Has never been convicted of a felony involving adulterated or misbranded food.

SEC. 23. Section 19302 of the Food and Agricultural Code is amended to read:

19302. The secretary, after notice and hearing, may refuse to issue a license unless he or she finds that the applicant satisfies both of the following:

(a) Is properly equipped to engage in the business of rendering.

(b) Has never been convicted of a felony involving adulterated or misbranded food.

SEC. 24. Section 20722 of the Food and Agricultural Code is amended to read:

20722. If the renewal fee that is required by Article 6 (commencing with Section 20751) is not paid by April 30th following the recordation of the brand, or by April 30th of the year that follows the last year for which the renewal fee has been paid, the right to use the brand is suspended by operation of law as of April 1st of that year.

SEC. 25. Section 20723 of the Food and Agricultural Code is amended to read:

20723. If the right to use a brand is suspended for more than one year, the right is forfeited on April 1st following the year of

suspension. The brand, thereafter, may be rerecorded by the former owner or it may be applied for by any other person pursuant to this chapter.

SEC. 26. Section 20797 of the Food and Agricultural Code is amended to read:

20797. Any person who loses his or her right to use a brand as a results of the determination of the chief pursuant to this article may appeal to the secretary within 15 days. The secretary may affirm, reverse, or modify the determination of the chief.

SEC. 27. Section 21739 of the Food and Agricultural Code is repealed.

SEC. 28. Section 21740 of the Food and Agricultural Code is repealed.

CHAPTER 681

An act to amend Sections 17553, 17557, 17560, and 17581 of, and to add Section 17558.6 to, the Government Code, relating to state-mandated local programs, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 17553 of the Government Code is amended to read:

17553. (a) The commission shall adopt procedures for receiving claims pursuant to this article and for providing a hearing on those claims. The hearing procedure shall provide for presentation of evidence by the claimant, the Department of Finance and any other affected department or agency, and any other interested person. The procedures shall ensure that a statewide cost estimate is adopted within 12 months after receipt of a test claim, when a determination is made by the commission that a mandate exists. This deadline may be extended for up to six months upon the request of either the claimant or the commission. Hearing of a claim may be postponed at the request of the claimant, without prejudice, until the next scheduled hearing.

(b) The procedures adopted by the commission pursuant to subdivision (a) shall include the following:

(1) Provisions for consolidating test claims relating to the same statute or executive order filed with the commission with time limits that do not exceed 30 days from the initial filing for consolidating the test claims and for claimants to designate a single contact for information regarding the test claim.

(2) Provisions for claimants to designate a single claimant for a test claim relating to the same statute or executive order filed with the commission, with time limits that do not exceed 30 days from the initial filing for making that designation.

(c) If a completed test claim is not received by the commission within 30 calendar days from the date that an incomplete test claim was returned by the commission, the original test claim filing date may be disallowed, and a new test claim may be accepted on the same statute or executive order.

(d) This section shall become operative on July 1, 1996.

SEC. 2. Section 17557 of the Government Code is amended to read:

17557. (a) If the commission determines there are costs mandated by the state pursuant to Section 17555, it shall determine the amount to be subvened to local agencies and school districts for reimbursement. In so doing it shall adopt parameters and guidelines for reimbursement of any claims relating to the statute or executive order. The successful test claimants shall submit proposed parameters and guidelines within 30 days of adoption of a statement of decision on a test claim. At the request of a successful test claimant, the commission may provide for one or more extensions of this 30-day period at any time prior to its adoption of the parameters and guidelines. If proposed parameters and guidelines are not submitted within the 30-day period and the commission has not granted an extension, then the commission shall notify the test claimant that the amount of reimbursement the test claimant is entitled to for the first 12 months of incurred costs will be reduced by 20 percent, unless the test claimant can demonstrate to the commission why an extension of the 30-day period is justified. A local agency, school district, and the state may file a claim or request with the commission to amend, modify, or supplement the parameters or guidelines. The commission may, after public notice and hearing, amend, modify, or supplement the parameters and guidelines.

(b) In adopting parameters and guidelines, the commission may adopt an allocation formula or uniform allowance which would provide for reimbursement of each local agency or school district of a specified amount each year.

(c) The parameters and guidelines adopted by the commission shall specify the fiscal years for which local agencies and school districts shall be reimbursed for costs incurred, provided, however, that the commission shall not specify therein any fiscal year for which payment could be provided in the annual Budget Act. A test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year. The claimant may thereafter amend the test claim at any time prior to a commission hearing on the claim without affecting the original filing date as long as the amendment substantially relates to the original test claim.

SEC. 3. Section 17558.6 is added to the Government Code, to read:

17558.6. It is the intent of the Legislature that the Commission on State Mandates review its process by which local agencies may appeal the reduction of reimbursement claims on the basis that the reduction is incorrect in order to provide for a more expeditious and less costly process.

SEC. 4. Section 17560 of the Government Code is amended to read:

17560. Reimbursement for state-mandated costs may be claimed as follows:

(a) A local agency or school district may file an estimated reimbursement claim by January 15 of the fiscal year in which costs are to be incurred, and, by January 15 following that fiscal year shall file an annual reimbursement claim that details the costs actually incurred for that fiscal year; or it may comply with the provisions of subdivision (b).

(b) A local agency or school district may, by January 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.

(c) In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of Section 17558 between October 15 and January 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

SEC. 5. Section 17581 of the Government Code is amended to read:

17581. (a) No local agency shall be required to implement or give effect to any statute or executive order, or portion thereof, during any fiscal year and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if all of the following apply:

(1) The statute or executive order, or portion thereof, has been determined by the Legislature, the commission, or any court to mandate a new program or higher level of service requiring reimbursement of local agencies pursuant to Section 6 of Article XIII B of the California Constitution.

(2) The statute or executive order, or portion thereof, has been specifically identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year. For purposes of this paragraph, a mandate shall be considered to have been specifically identified by the Legislature only if it has been included within the schedule of reimbursable mandates shown in the Budget Act and it is specifically identified in the language of a provision of the item providing the appropriation for mandate reimbursements.

(b) Notwithstanding any other provision of law, if a local agency elects to implement or give effect to a statute or executive order described in subdivision (a), the local agency may assess fees to persons or entities which benefit from the statute or executive order. Any fee assessed pursuant to this subdivision shall not exceed the costs reasonably borne by the local agency.

(c) This section shall not apply to any state-mandated local program for the trial courts, as specified in Section 77203.

(d) This section shall not apply to any state-mandated local program for which the reimbursement funding counts toward the minimum General Fund requirements of Section 8 of Article XVI of the Constitution.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the changes made by this act with respect to the filing for reimbursement for state-mandated local costs may be implemented at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 682

An act to add Section 6185 to the Business and Professions Code, and to amend Sections 100, 101, 13651, 16060.5, 16061, 16061.5, 16061.7, 16062, 16246, and 17200 of, and to add Sections 2468, 9764, and 18201 to, the Probate Code, relating to protective and probate proceedings.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 6185 is added to the Business and Professions Code, to read:

6185. (a) Upon appointment by the superior court pursuant to Section 2468, 9764, or paragraph (22) or (23) of subdivision (b) of Section 17200 of the Probate Code, a practice administrator, who is an active member of the State Bar, may be granted, by order of the court appointing this person, one or more of the following powers to take control of the practice of a deceased or disabled member of the State Bar of California:

(1) Take control of all operating and client trust accounts, business assets, equipment, client directories, and premises that were used in the conduct of the deceased or disabled member's practice.

(2) Take control and review all client files of the deceased or disabled member.

(3) Contact each client of the deceased or disabled member who can be reasonably ascertained and located to inform the client of the condition of the member and of the appointment of a practice administrator. The practice administrator may discuss various options for the selection of successor counsel with the client.

(4) In each case that is pending before any court or administrative body, notify the appropriate court or administrative body and contact opposing counsel in the cases under the control of the deceased or disabled member and obtain additional time for new counsel to appear for the affected client.

(5) Determine the liabilities of the practice and pay them for the assets of the practice. If the assets of the practice are insufficient to pay these obligations or for the expenses incurred by the practice administrator to carry out the powers ordered pursuant to this section, the practice administrator shall apply to the personal representative to obtain the additional funds that may be required. If the personal representative and the practice administrator are unable to agree on the amount that is necessary for the practice administrator to undertake the duties ordered pursuant to this paragraph, either party may apply to the court having jurisdiction over the estate of the deceased or disabled member for an order requesting funds from the estate.

(6) Employ any person, including but not limited to the employees of the deceased or disabled member, who may be necessary to assist the practice administrator in the management, winding up, and disposal of the practice.

(7) Create a plan for disposition of the practice of the deceased or disabled member to protect its value as an asset of the estate of the member. Subject to the approval of the personal representative of the estate, agree to the sale of the practice and its goodwill.

(8) Subject to the approval of the personal representative of the estate, reach agreements with successor counsel for division of fees for work in process on the cases of the deceased or disabled member.

(9) Subject to the prohibitions against soliciting cases, the practice administrator may act as successor counsel for a client of the deceased or disabled member.

(b) If the practice administrator is uncertain as to how to proceed with the powers granted pursuant to this section, he or she may apply to the Superior Court that has jurisdiction over the estate of the deceased or disabled member for instructions.

SEC. 2. Section 100 of the Probate Code is amended to read:

100. (a) Upon the death of a married person, one-half of the community property belongs to the surviving spouse and the other half belongs to the decedent.

(b) Notwithstanding subdivision (a), a husband and wife may agree in writing to divide their community property on the basis of a non pro rata division of the aggregate value of the community property or on the basis of a division of each individual item or asset

of community property, or partly on each basis. Nothing in this subdivision shall be construed to require this written agreement in order to permit or recognize a non pro rata division of community property.

SEC. 3. Section 101 of the Probate Code is amended to read:

101. (a) Upon the death of a married person domiciled in this state, one-half of the decedent's quasi-community property belongs to the surviving spouse and the other half belongs to the decedent.

(b) Notwithstanding subdivision (a), a husband and wife may agree in writing to divide their quasi-community property on the basis of a non pro rata division of the aggregate value of the quasi-community property, or on the basis of a division of each individual item or asset of quasi-community property, or partly on each basis. Nothing in this subdivision shall be construed to require this written agreement in order to permit or recognize a non pro rata division of quasi-community property.

SEC. 4. Section 2468 is added to the Probate Code, to read:

2468. (a) The conservator of the estate of a disabled attorney who was engaged in the practice of law at the time of his or her disability, or other person interested in the estate, may bring a petition seeking the appointment of an active member of the State Bar of California to take control of the files and assets of the practice of the disabled member.

(b) The petition may be filed and heard on such notice that the court determines is in the best interests of the persons interested in the estate of the disabled member. If the petition alleges that the immediate appointment of a practice administrator is required to safeguard the interests of the estate, the court may dispense with notice provided that the conservator is the petitioner or has joined in the petition or has otherwise waived notice of hearing on the petition.

(c) The petition shall indicate the powers sought for the practice administrator from the list of powers set forth in Section 6185 of the Business and Professions Code. These powers shall be specifically listed in the order appointing the practice administrator.

(d) The petition shall allege the value of the assets that are to come under the control of the practice administrator, including but not limited by the amount of funds in all accounts used by the disabled member. The court shall require the filing of a surety bond in the amount of the value of the personal property to be filed with the court by the practice administrator. No action may be taken by the practice administrator unless a bond has been duly filed with the court.

(e) The practice administrator shall not be the attorney representing the conservator.

(f) The court shall appoint the attorney nominated by the disabled member in a writing, including but not limited to the disabled member's will, unless the court concludes that the appointment of the nominated person would be contrary to the best interests of the

estate or would create a conflict of interest with any of the clients of the disabled member.

(g) The practice administrator shall be compensated only upon order of the court making the appointment for his or her reasonable and necessary services. The law practice shall be the source of the compensation for the practice administrator unless the assets are insufficient, in which case, the compensation of the practice administrator shall be charged against the assets of the estate as a cost of administration. The practice administrator shall also be entitled to reimbursement of his or her costs.

(h) Upon conclusion of the services of the practice administrator, the practice administrator shall render an accounting and petition for its approval by the superior court making the appointment. Upon settlement of the accounting, the practice administrator shall be discharged and the surety on his or her bond exonerated.

(i) If the court appointing the practice administrator determines upon petition that the disabled attorney has recovered his or her capacity to resume his or her law practice, the appointment of a practice administrator shall forthwith terminate and the disabled attorney shall be restored to his or her practice.

(j) For purposes of this section, the person appointed to take control of the practice of the disabled member shall be referred to as the "practice administrator" and the conservatee shall be referred to as the "disabled member."

SEC. 5. Section 9764 is added to the Probate Code, to read:

9764. (a) The personal representative of the estate of a deceased attorney who was engaged in a practice of law at the time of his or her death or other person interested in the estate may bring a petition for appointment of an active member of the State Bar of California to take control of the files and assets of the practice of the deceased member.

(b) The petition may be filed and heard on such notice that the court determines is in the best interests of the estate of the deceased member. If the petition alleges that the immediate appointment of a practice administrator is required to safeguard the interests of the estate, the court may dispense with notice only if the personal representative is the petitioner or has joined in the petition or has otherwise waived notice of hearing on the petition.

(c) The petition shall indicate the powers sought for the practice administrator from the list of powers set forth in Section 6185 of the Business and Professions Code. These powers shall be specifically listed in the order appointing the practice administrator.

(d) The petition shall allege the value of the assets that are to come under the control of the practice administrator, including, but not limited by the amount of funds in all accounts used by the deceased member. The court shall require the filing of a surety bond in the amount of the value of the personal property to be filed with the court

by the practice administrator. No action may be taken by the practice administrator unless a bond has been fully filed with the court.

(e) The practice administrator shall not be the attorney representing the personal representative.

(f) The court shall appoint the attorney nominated by the deceased member in a writing, including, but not limited to, the deceased member's will, unless the court concludes that the appointment of the nominated person would be contrary to the best interests of the estate or would create a conflict of interest with any of the clients of the deceased member.

(g) The practice administrator shall be compensated only upon order of the court making the appointment for his or her reasonable and necessary services. The law practice shall be the source of the compensation for the practice administrator unless the assets are insufficient in which case, the compensation of the practice administrator shall be charged against the assets of the estate as a cost of administration. The practice administrator shall also be entitled to reimbursement of his or her costs.

(h) Upon conclusion of the services of the practice administrator, the practice administrator shall render an accounting and petition for its approval by the superior court making the appointment. Upon settlement of the accounting, the practice administrator shall be discharged and the surety on his or her bond exonerated.

(i) For the purposes of this section, the person appointed to take control of the practice of the deceased member shall be referred to as the "practice administrator" and the decedent shall be referred to as the "deceased member."

SEC. 6. Section 13651 of the Probate Code is amended to read:

13651. (a) A petition filed pursuant to Section 13650 shall allege that administration of all or a part of the estate of the deceased spouse is not necessary for the reason that all or a part of the estate is property passing to the surviving spouse, and shall set forth all of the following information:

(1) If proceedings for the administration of the estate are not pending, the facts necessary to determine the county in which the estate of the deceased spouse may be administered.

(2) A description of the property of the deceased spouse which the petitioner alleges is property passing to the surviving spouse, including the trade or business name of any property passing to the surviving spouse that consists of an unincorporated business or an interest in an unincorporated business which the deceased spouse was operating or managing at the time of death, subject to any written agreement between the deceased spouse and the surviving spouse providing for a non pro rata division of the aggregate value of the community property assets or quasi-community assets, or both.

(3) The facts upon which the petitioner bases the allegation that all or a part of the estate of the deceased spouse is property passing to the surviving spouse.

(4) A description of any interest in the community property or quasi-community property, or both, which the petitioner requests the court to confirm to the surviving spouse as belonging to the surviving spouse pursuant to Section 100 or 101, subject to any written agreement between the deceased spouse and the surviving spouse providing for a non pro rata division of the aggregate value of the community property assets or quasi-community assets, or both.

(5) The name, age, address, and relation to the deceased spouse of each heir and devisee of the deceased spouse, the names and addresses of all persons named as executors of the will of the deceased spouse, and the names and addresses of all persons appointed as personal representatives of the deceased spouse, which are known to the petitioner.

Disclosure of any written agreement between the deceased spouse and the surviving spouse providing for a non pro rata division of the aggregate value of the community property assets or quasi-community property assets, or both, or the affirmative statement that this agreement does not exist. If a dispute arises as to the division of the community property assets or quasi-community property assets, or both, pursuant to this agreement, the court shall determine the division subject to terms and conditions or other remedies that appear equitable under the circumstances of the case, taking into account the rights of all interested persons.

(b) If the petitioner bases the allegation that all or part of the estate of the deceased spouse is property passing to the surviving spouse upon the will of the deceased spouse, a copy of the will shall be attached to the petition.

(c) If the petitioner bases the description of the property of the deceased spouse passing to the surviving spouse or the property to be confirmed to the surviving spouse, or both, upon a written agreement between the deceased spouse and the surviving spouse providing for a non pro rata division of the aggregate value of the community property assets or quasi-community assets, or both, a copy of the agreement shall be attached to the petition.

SEC. 7. Section 16060.5 of the Probate Code is amended 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. "Terms of the trust" does not include documents which were intended to affect administration or disposition only while the trust was revocable.

SEC. 8. Section 16061 of the Probate Code is amended to read:

16061. Except as provided in Section 16064, on reasonable request by a beneficiary, the trustee shall provide the beneficiary with a report of information about the assets, liabilities, receipts, and

disbursements of the trust, the acts of the trustee, and the particulars relating to the administration of the trust relevant to the beneficiary's interest, including the terms of the trust.

SEC. 9. Section 16061.5 of the Probate Code is amended 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 trust or 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. 10. Section 16061.7 of the Probate Code is amended 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 trustee 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.

(c) 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.

(d) The notification by trustee shall be served by mail to the last known address, pursuant to Section 1215, or by personal delivery.

(e) 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.

(f) 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.

(g) Unless the notification by trustee is served only because of a change of the trustee, the notification by trustee shall also include 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."

(h) 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 unless the 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.

(i) 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.

(j) A trustee may serve a notification by trustee in the form required by this section on any person in addition to those on whom the notification by trustee 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. A trustee is not required to serve a notification by trustee if the event that otherwise requires service of the notification by trustee occurs before January 1, 1998.

SEC. 11. Section 16062 of the Probate Code is amended to read:

16062. (a) Except as otherwise provided in this section and in Section 16064, the trustee shall account at least annually, at the termination of the trust, and upon a change of trustee, to each

beneficiary to whom income or principal is required or authorized in the trustee's discretion to be currently distributed.

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

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

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

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

SEC. 12. Section 16246 of the Probate Code is amended to read:

16246. The trustee has the power to effect distribution of property and money in divided or undivided interests and to adjust resulting differences in valuation. A distribution in kind may be made pro rata or non pro rata, and may be made pursuant to any written agreement providing for a non pro rata division of the aggregate value of the community property assets or quasi-community property assets, or both.

SEC. 13. 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.

(22) If a member of the State Bar of California has transferred the economic interest of his or her practice to a trustee and if the member is a deceased member under Section 9764, a petition may be brought to appoint a practice administrator. The procedures, including, but not limited to, notice requirements, that apply to the appointment

of a practice administrator for a deceased member shall apply to the petition brought under this section.

(23) If a member of the State Bar of California has transferred the economic interest of his or her practice to a trustee and if the member is a disabled member under Section 2468, a petition may be brought to appoint a practice administrator. The procedures, including, but not limited to, notice requirements, that apply to the appointment of a practice administrator for a disabled member shall apply to the petition brought under this section.

SEC. 14. Section 18201 is added to the Probate Code, to read:

18201. Any settlor whose trust property is subject to the claims of creditors pursuant to Section 18200 shall be entitled to all exemptions as provided in Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

CHAPTER 683

An act to amend and repeal Section 13106 of, to add Section 1803.4 to, and to repeal Section 13106 of, the Vehicle Code, relating to vehicles.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 1803.4 is added to the Vehicle Code, to read:

1803.4. Any record regarding the providing of information pursuant to Section 13106, or record of persons personally given notice by the department or a court, by a peace officer pursuant to Section 23137 or 23158.5, or otherwise pursuant to this code regarding the suspension or revocation of a person's privilege to operate a motor vehicle shall, upon request, be provided as follows:

(a) Immediately to any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, acting within the scope of his or her duties.

(b) Clearly stated on the record provided to any court of this state.

SEC. 2. Section 13106 of the Vehicle Code, as added by Section 5 of Chapter 1133 of the Statutes of 1994, is amended to read:

13106. (a) When the privilege of a person to operate a motor vehicle is suspended or revoked, the department shall notify the person by certified mail, return receipt requested, of the action taken and of the effective date thereof, except for those persons personally given notice by the department or a court, by a peace officer pursuant to Section 23137 or 23158.5, or otherwise pursuant to this code. It shall be conclusively presumed that a person has knowledge of the suspension or revocation if notice has been sent by certified

mail by the department pursuant to this section to the most recent address reported by the person to the department pursuant to Section 14600, and the return receipt has been signed and returned to the department. It is the responsibility of every licenseholder to report changes of address to the department pursuant to Section 14600.

(b) The department may utilize alternative methods for determining the whereabouts of a driver, whose driving privilege has been suspended or revoked under this code, for the purpose of providing the driver with notice of suspension or revocation. Alternative methods may include, but are not limited to, cooperating with other state agencies that maintain more current address information than the department's drivers license files.

(c) At the time of license reinstatement, the department shall recover, through fees authorized pursuant to Section 14906, an amount equal to its total costs of providing notices pursuant to this section.

SEC. 3. Section 13106 of the Vehicle Code, as added by Section 8 of Chapter 1221 of the Statutes of 1994, is repealed.

CHAPTER 684

An act to amend Sections 15381, 15382, 15383, 15384, 15385, 15386, and 15387 of the Government Code, relating to small business.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 15381 of the Government Code is amended to read:

15381. It is the intent of the Legislature to stimulate the economy and promote new job opportunities by assisting in the development of small businesses, including increased sales, investment, and international trade, by providing a comprehensive network of services to these businesses. These services shall include management assistance, business education and training, capital formation assistance, economic and business data dissemination, and technical assistance. It is further the intent of the Legislature to provide for the transfer of new technological development to the small business sector by linking research and development institutions to small business owners.

It is the intent of the Legislature that the network of services developed pursuant to this chapter be accessible to small businesses in the state by means of, among other things, a computerized data

base. The Legislature intends for this data base to be an inventory of available services to small businesses.

It is the intent of the Legislature to provide assistance to California's small businesses by management and staff experienced and knowledgeable in small business matters, whose skills are not always readily available within the civil service system.

It is the intent of the Legislature that the California Small Business Development Center Program goals include the following:

(a) Seek out appropriate sources of federal, state, and local public and private funding to support SBDCs.

(b) Promote and render client services available through the SBDCs to meet regional small business needs.

(c) Provide services to small manufacturing companies for long-term growth and job creation.

(d) Set measurable short- and long-term goals and objectives articulated in the CSBDC statewide strategic plan.

SEC. 2. Section 15382 of the Government Code is amended to read:

15382. For the purposes of this chapter, the following definitions apply:

(a) "CSBDC" means the California Small Business Development Center Program.

(b) "CSBDC Strategic Plan" means the plan prepared by the agency pursuant to subdivision (b) of Section 15383.

(c) "Local host entity" means a nonprofit corporation, higher education institution, local government, or a combination of these entities.

(d) "SBA" means the federal Small Business Administration.

(e) "SBDC" means a Small Business Development Center which is the local service delivery provider.

SEC. 3. Section 15383 of the Government Code is amended to read:

15383. (a) There is hereby created within the agency, in the Office of Small Business, the California Small Business Development Center Program, or CSBDC.

(b) The agency shall develop a strategic plan for the CSBDC with the cooperation of CSBDC partners, including, but not limited to, SBDCs, the Chancellor's Office of the California Community Colleges, and the SBA. The strategic plan shall be completed no later than July 1, 1999, and updated biennially. The first strategic plan shall include, but not be limited to, the following elements:

(1) Defining the role of the CSBDC in California's economic development effort.

(2) Ensuring a quality improvement and control system.

(3) Promoting the competitive advantages of the CSBDC network.

(4) Leveraging public and private resources.

(5) Developing strong relationships with partners and stakeholders.

(6) Providing peer support and professional development.

(7) Providing collaborative regional responses to economic development needs.

(8) Developing initiatives consistent with the changing economy.

(9) Maximizing technology for service delivery and program operations.

SEC. 4. Section 15384 of the Government Code is amended to read:

15384. (a) The agency shall administer the CSBDC and establish SBDCs according to the CSBDC Strategic Plan.

(b) The services to be provided by the SBDCs may be performed by independent contractors, private nonprofit corporations, public institutions, and local governments. Contracts shall be awarded on a competitive basis by a request for proposal process. Each SBDC shall include, but is not limited to, the following components:

(1) An advisory board comprising six or more members, a majority of whom shall be small business owners or represent small business owners. Board members shall reside or maintain a place of business within the area served by the SBDC. The advisory board shall do all of the following:

(A) Provide advice to the SBDC director on the SBDC activities.

(B) Identity outreach opportunities to the SBDC director.

(C) Provide feedback to the SBDC director on the services provided.

(2) Participation agreements with private individuals and firms to provide professional services either pro bono or at a reduced fee. Examples of participants include accountants, loan packagers, attorneys, business counselors, and economic development specialists.

(3) Cooperative agreements with private nonprofit corporations, public institutions, and local jurisdictions who shall coordinate services such as information dissemination, counseling and technical assistance, job training and placement, and special projects such as "how to" workshops for individuals starting businesses, technology transfer, government procurement, innovative research, and international trade.

Examples of participants include Minority Business Development Agency (MBDA) grantees, Small Business Financial Development Corporations, the SBA, the Service Core of Retired Executives (SCORE), the California Community Colleges and the California State University, Small Business Institutes (SBI), local job training and placement agencies, the California Office of Small and Minority Business, local economic development programs, redevelopment agencies, and coordinators of state enterprise zones, employment incentive areas and main street projects, and projects of the California Certified Development Corporation.

SEC. 5. Section 15385 of the Government Code is amended to read:

15385. (a) All local host entities shall provide match calculated as a percentage of federal and state funds, excluding appropriations under Section 8 of Article XVI of the California Constitution, annually allocated for that SBDC in the CSBDC's annual SBA proposal, also referred to as annual funding. Annual funding shall not be used as match without prior written authorization from the director appointed pursuant to Section 15386.

(b) Other than an increase in the agreement amount, any revision or change in the budget of any contract between the agency and an SBDC shall be made as determined by the agency and the SBDC as provided in the contract, and shall not be an amendment to the contract.

(c) SBDCs may be funded for successive terms by negotiated agreements between the agency and the SBDC based upon the SBDC's prior performance in meeting specified performance criteria and measurable objectives detailed in the negotiated agreement.

(d) In order to reduce cost to the state, the agency may pursue funds from the SBA.

(e) SBDCs may charge reasonable fees for services as approved by the CSBDC director.

(f) The agency may review and approve expenditures of all CSBDC funds to ensure conformity with the provisions and intent of this chapter.

SEC. 6. Section 15386 of the Government Code is amended to read:

15386. The program shall have a director, who shall be appointed by the secretary. The director shall be subject to all applicable provisions of state civil service law, and shall receive a salary fixed by the secretary with the approval of the Department of Personnel Administration.

SEC. 7. Section 15387 of the Government Code is amended to read:

15387. (a) The California Small Business Development Center Fund is hereby established in the State Treasury to receive donations, program income, private funds, any other nonstate and nonfederal funds, and interest that accrues to moneys in the fund.

(b) The Treasurer shall invest moneys in the fund not needed to meet current obligations in the same manner as public funds are invested.

(c) Private moneys contributed to the fund shall only be distributed in a manner consistent with the CSBDC Strategic Plan and program goals, and only following consultation with the SBA and the Chancellor's Office of the California Community Colleges.

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CHAPTER 685

An act to amend Section 15379.2 of the Government Code, relating to economic development.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 15379.2 of the Government Code is amended to read:

15379.2. (a) (1) The intent of the Regional Technology Alliances is to decentralize the delivery of services and resources, programs and activities for technology development, commercialization, application, and competitiveness at a regional level. The office shall provide the overall administration, coordination, and informational network for the Defense Industry Conversion and Diversification Program.

(2) The initial three alliances shall be established as nonprofit corporations in the San Francisco Bay Area, Los Angeles, and San Diego.

(3) The Trade and Commerce Agency may designate new Regional Technology Alliances upon application, to carry out activities described in this section. The agency may establish criteria for designation that includes, but need not be limited to, criteria previously established by the Defense Conversion Council pursuant to Article 3.7 (commencing with Section 15346) of Chapter 1, as it read on December 31, 1998.

(b) Each alliance shall perform the following activities:

(1) Raise and leverage funds from multiple public and private sources to support technology development, commercialization, and application and industry competitiveness particularly in response to defense industry conversion and diversification.

(2) Assist in the formation of new businesses.

(3) Maintain an electronic network and access to data bases that encourages business ventures.

(4) Coordinate with activities and efforts of industry, academia, federal laboratories, and governments.

(5) Recommend administrative actions or programs that could assist California's defense-dependent industries to successfully convert to commercial markets.

(6) Provide information about state and federal defense conversion programs, including, but not limited to, job training, economic development, industrial modernization, dual-use technology, new management techniques, and technology development and transfer.

(7) Identify emerging industries which may include commercial space applications, transportation, environment, high performance computing and communications, biotechnology and advanced materials, and processing and critical existing industries.

(c) Each alliance may also perform, but need not be limited to, the following activities:

(1) Assist in identifying businesses that could benefit from defense conversion programs and defense-dislocated workers who require employment and training opportunities.

(2) Assist and provide coordination in determining job opportunities within and outside of the defense industry for which displaced workers could be retrained and placed.

(3) Serve as a forum for industrywide networking linking producers, suppliers, and consumers.

(4) Assist individual businesses and industry consortia in applying for state and federal defense conversion program funds.

(5) Provide information and assistance in upgrading individual businesses and industrywide production and management processes.

(6) Provide information on available state and federal resources to aid businesses and workers affected by defense spending reductions, base closures, plant closures, and layoffs, to foster long-term economic vitality, industrial growth, and job opportunities.

(d) Each alliance is encouraged to develop activities that achieve the following results:

(1) Creation and retention of jobs.

(2) Creation of new businesses.

(3) Development of new commercial or dual-use products.

(4) Establishment of industry partnerships and consortia.

(5) Demonstration of productivity enhancement such as return on investment, reduced cost, employee training, and upgrades.

(6) Establishment of public and private partnerships.

(7) Commitment of industry support, participation, and capital.

(8) Leverage of state funds.

(9) Loan repayment ratio.

(10) Participation of small and minority women and disabled veteran owned businesses.

(11) Work force training.

(e) The agency shall be authorized to enter into a contract for services with any alliance to provide services to the office. These contracts shall be sole source contracts, and exempt from the competitive bid process.

(f) During the first two years following selection of an alliance, the alliance shall monitor the performance of any application funded pursuant to Section 15379.3, and each invoice for payment shall be reviewed and approved by the alliance, but the contract for services shall be directly between the office and the entity receiving grant funding. Commencing with the third year of designation, any

alliance with procedures and processes approved by the office shall be authorized to directly contract with grant recipients. The office shall audit these grants on a regular basis.

CHAPTER 686

An act to amend Sections 5675, 5768, 5771, 5771.3, 5771.5, and 5772 of the Welfare and Institutions Code, relating to mental health.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 5675 of the Welfare and Institutions Code is amended to read:

5675. (a) Subject to Section 5768, Placer County and up to six other counties may establish a pilot project for up to six years, to develop a shared mental health rehabilitation center for the provision of community care and treatment for persons with mental disorders who are placed in a state hospital or another health facility because no community placements are available to meet the needs of these patients. Participation in this pilot project by the counties shall be on a voluntary basis.

(b) (1) The department shall establish, by emergency regulation, the standards for the pilot project, and monitor the compliance of the counties with those standards. Placer County, in consultation with the department, shall be responsible for program monitoring.

(2) The department, in conjunction with the county mental health directors, shall provide an interim report to the Legislature within three years of the commencement of operation of the facilities authorized pursuant to this section regarding the progress and cost effectiveness demonstrated by the pilot project. The department, in conjunction with the county mental health directors, shall report to the Legislature within five years of the commencement of operation of the facilities authorized pursuant to this section regarding the progress and cost effectiveness demonstrated by the pilot project. The report shall evaluate whether the pilot project is effective based on clinical indicators, and is successful in preventing future placement of its clients in state hospitals or other long-term health facilities, and shall report whether the cost of care in the pilot facilities is less than the cost of care in state hospitals or in other long-term health facility options. The evaluation report shall include, but not be limited to, an evaluation of the selected method and the effectiveness of the pilot project staffing, and an analysis of the effectiveness of the pilot project at meeting all of the following objectives:

(A) That the clients placed in the facilities show improved global assessment scores, as measured by preadmission and postadmission tests.

(B) That the clients placed in the facilities demonstrate improved functional behavior as measured by preadmission and postadmission tests.

(C) That the clients placed in the facilities have reduced medication levels as determined by comparison of preadmission and postadmission records.

(3) The pilot project shall be deemed successful if it demonstrates both of the following:

(A) The costs of the program are no greater than public expenditures for providing alternative services to the clients served by the project.

(B) That the benefit to the clients, as described in this subdivision, is improved by the project.

(c) The project shall be subject to existing regulations of the State Department of Health Services applicable to health facilities that the State Department of Mental Health deems necessary for fire and life safety of persons with mental illness.

(d) The department shall consider projects proposed by other counties under Section 5768.

(e) (1) Clients served by the project shall have all of the protections and rights guaranteed to mental health patients pursuant to the following provisions of law:

(A) Part 1 (commencing with Section 5000) and this part.

(B) Article 5 (commencing with Section 835), Article 5.5 (commencing with Section 850), and Article 6 (commencing with Section 860) of Chapter 4 of Title 9 of the California Code of Regulations.

(2) Clients shall have access to the services of a county patients' rights advocates as provided in Chapter 6.2 (commencing with Section 5500) of Part 1.

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

SEC. 2. Section 5768 of the Welfare and Institutions Code is amended to read:

5768. (a) Notwithstanding any other provision of law, except as to requirements relating to fire and life safety of persons with mental illness, the department, in its discretion, may permit new programs to be developed and implemented without complying with licensure requirements established pursuant to existing state law.

(b) Any program developed and implemented pursuant to subdivision (a) shall be reviewed at least once each six months, as determined by the department.

(c) The department may establish appropriate licensing requirements for these new programs upon a determination that the programs should be continued.

(d) Within six years, any program shall require a licensure category if it is to be continued. However, in the event that any agency other than the department is responsible for developing a licensure category and fails to do so within the six years, the program may continue to be developed and implemented pursuant to subdivisions (a) and (b) until such time that the licensure category is established.

(e) (1) A nongovernmental entity proposing a program shall submit a program application and plan to the local mental health director that describes at least the following components: clinical treatment programs, activity programs, administrative policies and procedures, admissions, discharge planning, health records content, health records service, interdisciplinary treatment teams, client empowerment, patient rights, pharmaceutical services, program space requirements, psychiatric and psychological services, rehabilitation services, restraint and seclusion, space, supplies, equipment, and staffing standards. If the local mental health director determines that the application and plan are consistent with local needs and satisfactorily address the above components, he or she may approve the application and plan and forward them to the department.

(2) Upon the department's approval, the local mental health director shall implement the program and shall be responsible for regular program oversight and monitoring. The department shall be notified in writing of the outcome of each review of the program by the local mental health director, or his or her designee, for compliance with program requirements. The department shall retain ultimate responsibility for approving the method for review of each program, and the authority for determining the appropriateness of the local program's oversight and monitoring activities.

(f) Governmental entities proposing a program shall submit a program application and plan to the department that describes at least the components described in subdivision (e). Upon approval, the department shall be responsible for program oversight and monitoring.

(g) Implementation of a program shall be contingent upon the department's approval, and the department may reject applications or require modifications as it deems necessary. The department shall respond to each proposal within 90 days of receipt.

(h) The State Department of Health Services shall allow an applicant approved by the department with a current health facility license to place its license in suspense for a period of six years. At that time the department, in consultation with the State Department of

Health Services shall determine the most appropriate licensure for the program, pursuant to subdivisions (c) and (d).

(i) The department shall submit an evaluation to the Legislature of all pilot projects authorized pursuant to this section within five years of the commencement of operation of the pilot project, determining the effectiveness of that program or facility, or both, based on, but not limited to, changes in clinical indicators with respect to client functions.

SEC. 3. Section 5771 of the Welfare and Institutions Code is amended to read:

5771. (a) Pursuant to Public Law 102-321, there is the California Mental Health Planning Council. The purpose of the planning council shall be to fulfill those mental health planning requirements mandated by federal law.

(b) (1) The planning council shall have 40 members, to be comprised of members appointed from both the local and state levels in order to ensure a balance of state and local concerns relative to planning.

(2) As required by federal law, eight members of the planning council shall represent various state departments.

(3) Members of the planning council shall be appointed in such a manner as to ensure that at least one-half are persons with mental disabilities, family members of persons with mental disabilities, and representatives of organizations advocating on behalf of persons with mental disabilities. Persons with mental disabilities and family members shall be represented in equal numbers.

(4) The Director of Mental Health shall make appointments from nominees from mental health constituency organizations, which shall include representatives of consumer-related advocacy organizations, representatives of mental health professional and provider organizations, and one representative of the California Coalition on Mental Health.

(c) Members should be balanced according to demography, geography, gender, and ethnicity. Members should include representatives with interest in all target populations, including, but not limited to, children and youth, adults, and older adults.

(d) The planning council shall annually elect a chairperson and a vice chairperson.

(e) The term of each member shall be three years, to be staggered so that approximately one-third of the appointments expire in each year.

(f) In the event of changes in the federal requirements regarding the structure and function of the planning council, or the discontinuation of federal funding, the State Department of Mental Health shall propose to the Legislature modifications in the structure of the planning council that the department deems appropriate.

SEC. 4. Section 5771.3 of the Welfare and Institutions Code is amended to read:

5771.3. The California Mental Health Planning Council may utilize staff of the State Department of Mental Health, to the extent they are available, and the staff of any other public or private agencies that have an interest in the mental health of the public and that are able and willing to provide those services.

SEC. 5. Section 5771.5 of the Welfare and Institutions Code is amended to read:

5771.5. (a) (1) The Chairperson of the California Mental Health Planning Council, with the concurrence of a majority of the members of the California Mental Health Planning Council, shall appoint an executive officer who shall have those powers delegated to him or her by the council in accordance with this chapter.

(2) The executive officer shall be exempt from civil service.

(b) Within the limit of funds allotted for these purposes, the California Mental Health Planning Council may appoint other staff it may require according to the rules and procedures of the civil service system.

SEC. 6. Section 5772 of the Welfare and Institutions Code is amended to read:

5772. The California Mental Health Planning Council shall have the powers and authority necessary to carry out the duties imposed upon it by this chapter, including, but not limited to, the following:

(a) To advocate for effective, quality mental health programs.

(b) To review, assess, and make recommendations regarding all components of California's mental health system, and to report as necessary to the Legislature, the State Department of Mental Health, local boards, and local programs.

(c) To review program performance in delivering mental health services by annually reviewing performance outcome data as follows:

(1) To review and approve the performance outcome measures.

(2) To review the performance of mental health programs based on performance outcome data and other reports from the State Department of Mental Health and other sources.

(3) To report findings and recommendations on programs' performance annually to the Legislature, the State Department of Mental Health, and the local boards.

(4) To identify successful programs for recommendation and for consideration of replication in other areas. As data and technology are available, identify programs experiencing difficulties.

(d) When appropriate, make a finding pursuant to Section 5655 that a county's performance is failing in a substantive manner. The State Department of Mental Health shall investigate and review the finding, and report the action taken to the Legislature.

(e) To advise the Legislature, the State Department of Mental Health, and county boards on mental health issues and the policies and priorities that this state should be pursuing in developing its mental health system.

(f) To periodically review the state's data systems and paperwork requirements to ensure that they are reasonable and in compliance with state and federal law.

(g) To make recommendations to the State Department of Mental Health on the award of grants to county programs to reward and stimulate innovation in providing mental health services.

(h) To conduct public hearings on the state mental health plan, the Substance Abuse and Mental Health Services Administration block grant, and other topics, as needed.

(i) To participate in the recruitment of candidates for the position of Director of Mental Health and provide advice on the final selection.

(j) In conjunction with other statewide and local mental health organizations, assist in the coordination of training and information to local mental health boards as needed to ensure that they can effectively carry out their duties.

(k) To advise the Director of Mental Health on the development of the state mental health plan and the system of priorities contained in that plan.

(*l*) To assess periodically the effect of realignment of mental health services and any other important changes in the state's mental health system, and to report its findings to the Legislature, the State Department of Mental Health, local programs, and local boards, as appropriate.

(m) To suggest rules, regulations, and standards for the administration of this division.

(n) When requested, to mediate disputes between counties and the state arising under this part.

(o) To employ administrative, technical, and other personnel necessary for the performance of its powers and duties, subject to the approval of the Department of Finance.

(p) To accept any federal fund granted, by act of Congress or by executive order, for purposes within the purview of the California Mental Health Planning Council, subject to the approval of the Department of Finance.

(q) To accept any gift, donation, bequest, or grants of funds from private and public agencies for all or any of the purposes within the purview of the California Mental Health Planning Council, subject to the approval of the Department of Finance.

CHAPTER 687

An act to amend Section 1091 of the Government Code, relating to conflicts of interest, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 1091 of the Government Code is amended to read:

1091. (a) An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member within the meaning of this article if the officer has only a remote interest in the contract and if the fact of that interest is disclosed to the body of the board of which the officer is a member and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest.

(b) As used in this article, "remote interest" means any of the following:

(1) That of an officer or employee of a nonprofit corporation, except as provided in paragraph (8) of subdivision (a) of Section 1091.5.

(2) That of an employee or agent of the contracting party, if the contracting party has 10 or more other employees and if the officer was an employee or agent of that contracting party for at least three years prior to the officer initially accepting his or her office and the officer owns less than 3 percent of the shares of stock of the contracting party; and the employee or agent is not an officer or director of the contracting party and did not directly participate in formulating the bid of the contracting party.

For purposes of this paragraph, time of employment with the contracting party by the officer shall be counted in computing the three-year period specified in this paragraph even though the contracting party has been converted from one form of business organization to a different form of business organization within three years of the initial taking of office by the officer. Time of employment in that case shall be counted only if, after the transfer or change in organization, the real or ultimate ownership of the contracting party is the same or substantially similar to that which existed before the transfer or change in organization. For purposes of this paragraph, stockholders, bondholders, partners, or other persons holding an interest in the contracting party are regarded as having the "real or ultimate ownership" of the contracting party.

(3) That of an employee or agent of the contracting party, if all of the following conditions are met:

(A) The agency of which the person is an officer is a local public agency located in a county with a population of less than 4,000,000.

(B) The contract is competitively bid and is not for personal services.

(C) The employee or agent is not in a primary management capacity with the contracting party, is not an officer or director of the contracting party, and holds no ownership interest in the contracting party.

(D) The contracting party has 10 or more other employees.

(E) The employee or agent did not directly participate in formulating the bid of the contracting party.

(F) The contracting party is the lowest responsible bidder.

(4) That of a parent in the earnings of his or her minor child for personal services.

(5) That of a landlord or tenant of the contracting party.

(6) That of an attorney of the contracting party or that of an owner, officer, employee, or agent of a firm which renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of 10 percent or more in the law practice or firm, stock brokerage firm, insurance firm, or real estate firm.

(7) That of a member of a nonprofit corporation formed under the Food and Agricultural Code or a nonprofit corporation formed under the Corporations Code for the sole purpose of engaging in the merchandising of agricultural products or the supplying of water.

(8) That of a supplier of goods or services when those goods or services have been supplied to the contracting party by the officer for at least five years prior to his or her election or appointment to office.

(9) That of a person subject to the provisions of Section 1090 in any contract or agreement entered into pursuant to the provisions of the California Land Conservation Act of 1965.

(10) Except as provided in subdivision (b) of Section 1091.5, that of a director of or a person having an ownership interest of 10 percent or more in a bank, bank holding company, or savings and loan association with which a party to the contract has a relationship of borrower or depositor, debtor or creditor.

(11) That of an engineer, geologist, or architect employed by a consulting engineering or architectural firm. This paragraph applies only to an employee of a consulting firm who does not serve in a primary management capacity, and does not apply to an officer or director of a consulting firm.

(12) That of an elected officer otherwise subject to Section 1090, in any housing assistance payment contract entered into pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f) as amended, provided that the housing assistance payment contract was in existence before Section 1090 became applicable to the officer and will be renewed or extended only as to the existing tenant, or, in a jurisdiction in which the rental vacancy rate is less

than 5 percent, as to new tenants in a unit previously under a Section 8 contract. This section applies to any person who became a public official on or after November 1, 1986.

(c) This section is not applicable to any officer interested in a contract who influences or attempts to influence another member of the body or board of which he or she is a member to enter into the contract.

(d) The willful failure of an officer to disclose the fact of his or her interest in a contract pursuant to this section is punishable as provided in Section 1097. That violation does not void the contract unless the contracting party had knowledge of the fact of the remote interest of the officer at the time the contract was executed.

SEC. 2. 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 legislative bodies to execute contracts that are currently pending, it is necessary that this act take effect immediately.

CHAPTER 688

An act to amend Sections 10094.2 and 10095 of the Insurance Code, relating to insurance.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 10094.2 of the Insurance Code is amended to read:

10094.2. Notwithstanding subdivision (c) of Section 10095, the facility shall, pursuant to regulations adopted by the commissioner, provide for a method whereby insurers who voluntarily write basic property insurance on risks located in areas designated as brush hazard areas by the Insurance Services Office (ISO) will, to that extent, be proportionately relieved of the liability to participate in a plan adopted pursuant to this chapter. Furthermore, notwithstanding subdivision (c) of Section 10095, the facility shall, pursuant to regulations adopted by the commissioner, provide for a method whereby insurers who voluntarily write basic property insurance or business owners package insurance on risks located in areas designated as inner-city areas by the commissioner will, to that extent, be proportionately relieved of the liability to participate in a plan adopted pursuant to this chapter. Nothing in this chapter shall

preclude adoption of a plan or plans to allow proportionate credit for voluntary writings in other areas or for other classes of insurance.

SEC. 2. Section 10095 of the Insurance Code is amended to read:

10095. (a) Within 30 days following the effective date of this chapter, the association shall submit to the commissioner, for his or her review, a proposed plan of operation, consistent with the provisions of this chapter, creating an association consisting of all insurers licensed to write and engaged in writing in this state, on a direct basis, basic property insurance or any component thereof in homeowners or other dwelling multiperil policies. Every insurer so described shall be a member of the association and shall remain a member as a condition of its authority to transact those kinds of insurance in this state.

(b) The proposed plan shall authorize the association to assume and cede reinsurance on risks written by insurers in conformity with the program.

(c) Under the plan, each insurer shall participate in the writings, expenses, profits and losses of the association in the proportion that its premiums written during the second preceding calendar year bear to the aggregate premiums written by all insurers in the program, excluding that portion of the premiums written attributable to the operation of the association. Premiums written on a policy of basic residential earthquake insurance issued by the California Earthquake Authority pursuant to Section 10089.6 shall be attributed to the insurer that writes the underlying policy of residential property insurance.

(d) The plan shall provide for administration by a governing committee under rules to be adopted by it with the approval of the commissioner. Voting on administrative questions of the association and facility shall be weighted in accordance with each insurer's premiums written during the second preceding calendar year as disclosed in the reports filed by the insurer with the commissioner.

(e) The plan shall provide for a plan to encourage persons to secure basic property insurance through normal channels from an admitted insurer or a licensed surplus line broker by informing those persons what steps they must take in order to secure the insurance through normal channels.

(f) The plan shall be subject to the approval of the commissioner and shall go into effect upon the tentative approval of the commissioner. The commissioner may, at any time, withdraw his or her tentative approval or he or she may, at any time after he or she has given his or her final approval revoke that approval if he or she feels it is necessary to carry out the purposes of the chapter. The withdrawal or revocation of such approval shall not affect the validity of any policies executed prior to the date of the withdrawal. If the commissioner disapproves or withdraws or revokes his or her approval to all or any part of the plan of operation, the association shall within 30 days, submit for review an appropriately revised plan

or part thereof, and, if the association fails to do so, or if the revised plan so filed is unacceptable, the commissioner shall promulgate a plan of operation or part thereof as he or she may deem necessary to carry out the purpose of this chapter.

(g) The association may, on its own initiative or at the request of the commissioner, amend the plan of operation, subject to approval by the commissioner, who shall have supervision of the inspection bureau, the facility and the association. The commissioner or any person designated by him or her, shall have the power of visitation of and examination into the operation and free access to all the books, records, files, papers, and documents that relate to operation of the facility and association, and may summon, qualify, and examine as witnesses all persons having knowledge of those operations, including officers, agents, or employees thereof.

(h) Every insurer member of the plan shall provide to applicants who are denied coverage the statewide toll-free "800" number for the plan established pursuant to Section 10095.5 for the purpose of obtaining information and assistance in obtaining basic property insurance.

SEC. 3. The amendment of Section 10094.2 of the Insurance Code made by this act does not constitute a change in, but is declaratory of, existing law.

CHAPTER 689

An act to amend Section 17621 of the Education Code, to amend Sections 7260, 65039, 65850, 65860, 65915, 66007, 66021, 66452.6, 66477, and 66498.5 of, to add Sections 65850.3 and 66413.5 to, and to repeal Section 65587.1 of, the Government Code, to amend Sections 18035.3, 18062.2, and 18070.5 of, to amend and repeal Section 17959.3 of, to add and repeal Section 50710.2 of, and to repeal Section 18202 of, the Health and Safety Code, and to amend Section 423.3 of the Revenue and Taxation Code, relating to housing and land use.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. (a) This act shall be known and may be cited as the Housing and Land Use Omnibus Act of 1998.

(b) The Legislature finds and declares that Californians desire their government to be run efficiently and economically, and that public officials should avoid waste and duplication whenever possible. The Legislature further finds and declares that it desires to control its own operating costs by reducing the number of separate bills affecting housing, land use, and related topics. Therefore, it is the

intent of the Legislature in enacting this act to combine several minor, noncontroversial statutory changes relating to housing, land use, and related topics into a single measure.

SEC. 1.3. Section 17621 of the Education Code is amended to read:

17621. (a) Any resolution adopting or increasing a fee, charge, dedication, or other requirement pursuant to Section 17620, for application to residential, commercial, or industrial development, shall be enacted in accordance with Chapter 5 (commencing with Section 66000) of Division 1 of Title 7 of the Government Code. The adoption, increase, or imposition of any fee, charge, dedication, or other requirement pursuant to Section 17620 shall not be subject to the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code. The adoption of, or increase in, the fee, charge, dedication, or other requirement shall be effective no sooner than 60 days following the final action on that adoption or increase, except as specified in subdivision (b).

(b) Without following the procedure otherwise required for adopting or increasing a fee, charge, dedication, or other requirement, the governing board of a school district may adopt an urgency measure as an interim authorization for a fee, charge, dedication, or other requirement, or increase in a fee, charge, dedication, or other requirement, where necessary to respond to a current and immediate threat to the public health, welfare, or safety. The interim authorization shall require a four-fifths vote of the governing board for adoption, and shall contain findings describing the current and immediate threat to the public health, welfare, or safety. The interim authorization shall have no force or effect on and after a date 30 days after its adoption. After notice and hearing in accordance with subdivision (a), the governing board, upon a four-fifths vote of the board, may extend the interim authority for an additional 30 days. Not more than two extensions may be granted.

(c) Upon adopting or increasing a fee, charge, dedication, or other requirement pursuant to subdivision (a) or (b), the school district shall transmit a copy of the resolution to each city and each county in which the district is situated, accompanied by all relevant supporting documentation and a map clearly indicating the boundaries of the area subject to the fee, charge, dedication, or other requirement. The school district governing board shall specify, pursuant to that notification, whether or not the collection of the fee or other charge is subject to the restriction set forth in subdivision (a) of Section 66007 of the Government Code.

(d) Any party on whom a fee, charge, dedication, or other requirement has been directly imposed pursuant to Section 17620 may protest the establishment or imposition of that fee, charge, dedication, or other requirement in accordance with Section 66020 of the Government Code, except that the procedures set forth in Section 66021 of the Government Code are deemed to apply, for this

purpose, to commercial and industrial development, as well as to residential development.

(e) In the case of any commercial or industrial development, the following procedures shall also apply:

(1) The school district governing board shall, in the course of making the findings required under subdivisions (a) and (b) of Section 66001 of the Government Code, do all of the following:

(A) Make the findings on either an individual project basis or on the basis of categories of commercial or industrial development. Those categories may include, but are not limited to, the following uses: office, retail, transportation, communications and utilities, light industrial, heavy industrial, research and development, and warehouse.

(B) Conduct a study to determine the impact of the increased number of employees anticipated to result from the commercial or industrial development upon the cost of providing school facilities within the district. For the purpose of making that determination, the study shall utilize employee generation estimates that are calculated on either an individual project or categorical basis, in accordance with subparagraph (A). Those employee generation estimates shall be based upon commercial and industrial factors within the district or upon, in whole or in part, the applicable employee generation estimates set forth in the January 1990 edition of "San Diego Traffic Generators," a report of the San Diego Association of Governments.

(C) The governing board shall take into account the results of that study in making the findings described in this subdivision.

(2) In addition to any other requirement imposed by law, in the case of any development project against which a fee, charge, dedication, or other requirement is to be imposed pursuant to Section 53080 on the basis of a category of commercial or industrial development, as described in paragraph (1), the governing board shall provide a process that permits the party against whom the fee, charge, dedication, or other requirement is to be imposed the opportunity for a hearing to appeal that imposition. The grounds for that appeal include, but are not limited to, the inaccuracy of including the project within the category pursuant to which the fee, charge, dedication, or other requirement is to be imposed, or that the employee generation or pupil generation factors utilized under the applicable category are inaccurate as applied to the project. The party appealing the imposition of the fee, charge, dedication, or other requirement shall bear the burden of establishing that the fee, charge, dedication, or other requirement is improper.

SEC. 1.4. 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 does 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 that 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.

(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 that 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 adopted pursuant to this chapter, 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 person's 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. 1.5. Section 65039 of the Government Code is amended to read:

65039. The Governor may appoint the Director of Planning and Research at a salary that shall be fixed pursuant to Section 12001.

SEC. 2. Section 65587.1 of the Government Code is repealed.

SEC. 3. Section 65850 of the Government Code is amended to read:

65850. The legislative body of any county or city may, pursuant to this chapter, adopt ordinances that do any of the following:

(a) Regulate the use of buildings, structures, and land as between industry, business, residences, open space, including agriculture, recreation, enjoyment of scenic beauty, use of natural resources, and other purposes.

(b) Regulate signs and billboards.

(c) Regulate all of the following:

(1) The location, height, bulk, number of stories, and size of buildings and structures.

(2) The size and use of lots, yards, courts, and other open spaces.

(3) The percentage of a lot which may be occupied by a building or structure.

(4) The intensity of land use.

(d) Establish requirements for offstreet parking and loading.

(e) Establish and maintain building setback lines.

(f) Create civic districts around civic centers, public parks, public buildings, or public grounds, and establish regulations for those civic districts.

SEC. 4. Section 65850.3 is added to the Government Code, to read:

65850.3. (a) The legislative body of any county or city may regulate, pursuant to a content neutral zoning ordinance, the time, place, and manner of operation of sexually oriented businesses, when the ordinance is designed to serve a substantial governmental interest, does not unreasonably limit alternative avenues of communication, and is based on narrow, objective, and definite standards. The legislative body is entitled to rely on the experiences of other counties and cities and on the findings of court cases in establishing the reasonableness of the ordinance and its relevance to the specific problems it addresses, including the harmful secondary effects the business may have on the community and its proximity to churches, schools, residences, establishments dispensing alcohol, and other sexually oriented businesses.

(b) For purposes of this section, a sexually oriented business is one whose primary purpose is the sale or display of matter that, because of its sexually explicit nature, may, pursuant to state law or local regulatory authority, be offered only to persons over the age of 18 years.

(c) This section shall not be construed to preempt the legislative body of any city or county from regulating a sexually oriented business, or similar establishment in the manner and to the extent permitted by the United States Constitution and the California Constitution.

SEC. 5. Section 65860 of the Government Code is amended to read:

65860. (a) County or city zoning ordinances shall be consistent with the general plan of the county or city by January 1, 1974. A zoning ordinance shall be consistent with a city or county general plan only if both of the following conditions are met:

(1) The city or county has officially adopted such a plan.

(2) The various land uses authorized by the ordinance are compatible with the objectives, policies, general land uses, and programs specified in the plan.

(b) Any resident or property owner within a city or a county, as the case may be, may bring an action or proceeding in the superior

court to enforce compliance with subdivision (a). Any such action or proceeding shall be governed by Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure. No action or proceeding shall be maintained pursuant to this section by any person unless the action or proceeding is commenced and service is made on the legislative body within 90 days of the enactment of any new zoning ordinance or the amendment of any existing zoning ordinance.

(c) In the event that a zoning ordinance becomes inconsistent with a general plan by reason of amendment to the plan, or to any element of the plan, the zoning ordinance shall be amended within a reasonable time so that it is consistent with the general plan as amended.

(d) Notwithstanding Section 65803, this section shall apply in a charter city of 2,000,000 or more population to a zoning ordinance adopted prior to January 1, 1979, which zoning ordinance shall be consistent with the general plan of the city by July 1, 1982.

SEC. 6. Section 65915 of the Government Code is amended to read:

65915. (a) When a developer of housing proposes a housing development within the jurisdiction of the local government, the city, county, or city and county shall provide the developer incentives for the production of lower income housing units within the development if the developer meets the requirements set forth in subdivisions (b) and (c). The city, county, or city and county shall adopt an ordinance which shall specify the method of providing developer incentives.

(b) When a developer of housing agrees or proposes to construct at least (1) 20 percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (2) 10 percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code, or (3) 50 percent of the total dwelling units of a housing development for qualifying residents, as defined in Section 51.3 of the Civil Code, a city, county, or city and county shall either (1) grant a density bonus and at least one of the concessions or incentives identified in subdivision (h) unless the city, county, or city and county makes a written finding that the additional concession or incentive is not required in order to provide for affordable housing costs as defined in Section 50052.5 of the Health and Safety Code or for rents for the targeted units to be set as specified in subdivision (c), or (2) provide other incentives of equivalent financial value based upon the land cost per dwelling unit.

(c) A developer shall agree to and the city, county, or city and county shall ensure continued affordability of all lower income density bonus units for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Those units

targeted for lower income households, as defined in Section 50079.5 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 60 percent of area median income. Those units targeted for very low income households, as defined in Section 50105 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 50 percent of area median income. If a city, county, or city and county does not grant at least one additional concession or incentive pursuant to paragraph (1) of subdivision (b), the developer shall agree to and the city, county, or city and county shall ensure continued affordability for 10 years of all lower income housing units receiving a density bonus.

(d) A developer may submit to a city, county, or city and county a preliminary proposal for the development of housing pursuant to this section prior to the submittal of any formal requests for general plan amendments, zoning amendments, or subdivision map approvals. The city, county, or city and county shall, within 90 days of receipt of a written proposal, notify the housing developer in writing of the procedures under which it will comply with this section. The city, county, or city and county shall establish procedures for carrying out this section, which shall include legislative body approval of the means of compliance with this section. The city, county, or city and county shall also establish procedures for waiving or modifying development and zoning standards which would otherwise inhibit the utilization of the density bonus on specific sites. These procedures shall include, but not be limited to, such items as minimum lot size, side yard setbacks, and placement of public works improvements.

(e) The housing developer shall show that the waiver or modification is necessary to make the housing units economically feasible.

(f) For the purposes of this chapter, "density bonus" means a density increase of at least 25 percent over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the developer to the city, county, or city and county. The density bonus shall not be included when determining the number of housing units which is equal to 10 or 20 percent of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units.

(g) "Housing development," as used in this section, means one or more groups of projects for residential units constructed in the planned development of a city, county, or city and county. For purposes of calculating a density bonus, the residential units do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(h) For purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements which exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required.

(2) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county which result in identifiable cost reductions.

This subdivision does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(i) If a developer agrees to construct both 20 percent of the total units for lower income households and 10 percent of the total units for very low income households, the developer is entitled to only one density bonus and at least one additional concession or incentive identified in Section 65913.4 under this section although the city, city and county, or county may, at its discretion, grant more than one density bonus.

SEC. 6.5. Section 66007 of the Government Code is amended to read:

66007. (a) Except as otherwise provided in subdivision (b), any local agency that imposes any fees or charges on a residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first. However, utility service fees may be collected at the time an application for utility service is received. If the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be paid on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs first; on a pro rata basis when a certain percentage of the dwellings have received their final inspection or certificate of occupancy, whichever occurs first; or on a lump-sum basis when the first dwelling in the development

receives its final inspection or certificate of occupancy, whichever occurs first.

(b) Notwithstanding subdivision (a), the local agency may require the payment of those fees or charges at an earlier time if (1) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (2) the fees or charges are to reimburse the local agency for expenditures previously made. "Appropriated," as used in this subdivision, means authorization by the governing body of the local agency for which the fee is collected to make expenditures and incur obligations for specific purposes.

(c) (1) If any fee or charge specified in subdivision (a) is not fully paid prior to issuance of a building permit for construction of any portion of the residential development encumbered thereby, the local agency issuing the building permit may require the property owner, or lessee if the lessee's interest appears of record, as a condition of issuance of the building permit, to execute a contract to pay the fee or charge, or applicable portion thereof, within the time specified in subdivision (a). If the fee or charge is prorated pursuant to subdivision (a), the obligation under the contract shall be similarly prorated.

(2) The obligation to pay the fee or charge shall inure to the benefit of, and be enforceable by, the local agency that imposed the fee or charge, regardless of whether it is a party to the contract. The contract shall contain a legal description of the property affected, shall be recorded in the office of the county recorder of the county and, from the date of recordation, shall constitute a lien for the payment of the fee or charge, which shall be enforceable against successors in interest to the property owner or lessee at the time of issuance of the building permit. The contract shall be recorded in the grantor-grantee index in the name of the public agency issuing the building permit as grantee and in the name of the property owner or lessee as grantor. The local agency shall record a release of the obligation, containing a legal description of the property, in the event the obligation is paid in full, or a partial release in the event the fee or charge is prorated pursuant to subdivision (a).

(3) The contract may require the property owner or lessee to provide appropriate notification of the opening of any escrow for the sale of the property for which the building permit was issued and to provide in the escrow instructions that the fee or charge be paid to the local agency imposing the same from the sale proceeds in escrow prior to disbursing proceeds to the seller.

(d) This section applies only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or

inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law.

(e) "Final inspection" or "certificate of occupancy," as used in this section, have the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 edition.

(f) Methods of complying with the requirement in subdivision (b) that a proposed construction schedule or plan be adopted, include, but are not limited to, (1) the adoption of the capital improvement plan described in Section 66002, or (2) the submittal of a five-year plan for construction and rehabilitation of school facilities pursuant to subdivision (c) of Section 17017.5 of the Education Code.

SEC. 7. Section 66021 of the Government Code is amended to read:

66021. (a) Any party on whom a fee, tax, assessment, dedication, reservation, or other exaction has been imposed, the payment or performance of which is required to obtain governmental approval of a development, as defined by Section 65927, or development project, may protest the establishment or imposition of the fee, tax, assessment, dedication, reservation, or other exaction as provided in Section 66020.

(b) The protest procedures of subdivision (a) do not apply to the protest of any tax or assessment (1) levied pursuant to a principal act that contains protest procedures, or (2) that is pledged to secure payment of the principal of, or interest on, bonds or other public indebtedness.

SEC. 7.5. Section 66413.5 is added to the Government Code, to read:

66413.5. (a) When any area in a subdivision or proposed subdivision as to which a tentative map meeting the criteria of this section has been approved by a board of supervisors is incorporated into a newly incorporated city, the newly incorporated city shall approve the final map if it meets all of the conditions of the tentative map and meets the requirements and conditions for approval of final maps as provided in Article 4 (commencing with Section 66456), and other requirements of this division.

(b) When any area in a subdivision or proposed subdivision as to which a vesting tentative map meeting the criteria of this section has been approved by a board of supervisors is incorporated into a newly incorporated city, the newly incorporated city shall approve the final map and give effect to the vesting tentative map as provided in Chapter 4.5 (commencing with Section 66498.1), if the final map meets all of the conditions of the vesting tentative map and meets the requirements and conditions for approval of final maps as provided in Article 4 (commencing with Section 66456), Chapter 4.5 (commencing with Section 66498.1), and other requirements of this division.

(c) Notwithstanding subdivisions (a) and (b), the newly incorporated city may condition or deny a permit, approval, or extension, or entitlement if it determines either of the following:

(1) Failure to do so would place the residents of the subdivision or the immediate community, or both, in a condition dangerous to their health or safety, or both.

(2) The condition or denial is required, in order to comply with state or federal law.

(d) The rights conferred by this section shall expire if a final map application is not timely filed prior to the expiration of the tentative or vesting tentative map. Prior to the approval of the final map, the rights conferred by this section shall be subject to the applicable time periods set forth in Section 66452.6, which shall not exceed eight years from the date of the incorporation unless an applicant and the newly incorporated city mutually agree to a longer period provided by this division.

(e) An approved tentative map or vesting tentative map shall not limit a newly incorporated city from imposing reasonable conditions on subsequent required approvals or permits necessary for the development, and authorized by the ordinances, policies, and standards described in Section 66474.2.

(f) Except as otherwise provided in subdivision (g), this section applies to any approved tentative map or approved vesting tentative map that meets both of the following requirements:

(1) The application for the tentative map or the vesting tentative map is submitted prior to the date that the first signature was affixed to the petition for incorporation pursuant to Section 56704, regardless of the validity of the first signature, or the adoption of the resolution pursuant to Section 56800, whichever occurs first.

(2) The county approved the tentative map or the vesting tentative map prior to the date of the election on the question of incorporation.

(g) This section does not apply to any territory for which the effective date of the incorporation is prior to January 1, 1999.

(h) It is not the intent of the Legislature to influence or affect any litigation pending on or initiated before January 1, 1999.

SEC. 8. Section 66452.6 of the Government Code is amended to read:

66452.6. (a) (1) An approved or conditionally approved tentative map shall expire 24 months after its approval or conditional approval, or after any additional period of time as may be prescribed by local ordinance, not to exceed an additional 12 months. However, if the subdivider is required to expend one hundred twenty-five thousand dollars ($125,000) or more to construct, improve, or finance the construction or improvement of public improvements outside the property boundaries of the tentative map, excluding improvements of public rights-of-way which abut the boundary of the property to be subdivided and which are reasonably related to

the development of that property, each filing of a final map authorized by Section 66456.1 shall extend the expiration of the approved or conditionally approved tentative map by 36 months from the date of its expiration, as provided in this section, or the date of the previously filed final map, whichever is later. The extensions shall not extend the tentative map more than 10 years from its approval or conditional approval. However, a tentative map on property subject to a development agreement authorized by Article 2.5 (commencing with Section 65864) of Chapter 4 of Division 1 may be extended for the period of time provided for in the agreement, but not beyond the duration of the agreement. The number of phased final maps that may be filed shall be determined by the advisory agency at the time of the approval or conditional approval of the tentative map.

(2) The amount of one hundred twenty-five thousand dollars ($125,000) shall be increased by the registrar of contractors according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting. The adjustment by the registrar of contractors shall be effective on the first day of the month occurring more than 30 calendar days after the registrar makes that adjustment. The adjusted amount shall apply to tentative and vesting tentative maps whose applications were received after the effective date of the adjustment.

(3) "Public improvements," as used in this subdivision, include traffic controls, streets, roads, highways, freeways, bridges, overcrossings, street interchanges, flood control or storm drain facilities, sewer facilities, water facilities, and lighting facilities.

(b) (1) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (e), shall not include any period of time during which a development moratorium, imposed after approval of the tentative map, is in existence. However, the length of the moratorium shall not exceed five years.

(2) The length of time specified in paragraph (1) shall be extended for up to three years, but in no event beyond January 1, 1992, during the pendency of any lawsuit in which the subdivider asserts, and the local agency which approved or conditionally approved the tentative map denies, the existence or application of a development moratorium to the tentative map.

(3) Once a development moratorium is terminated, the map shall be valid for the same period of time as was left to run on the map at the time that the moratorium was imposed. However, if the remaining time is less than 120 days, the map shall be valid for 120 days following the termination of the moratorium.

(c) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (e), shall not include the period of time during which a lawsuit involving the approval or conditional approval of the tentative map is or was

pending in a court of competent jurisdiction, if the stay of the time period is approved by the local agency pursuant to this section. After service of the initial petition or complaint in the lawsuit upon the local agency, the subdivider may apply to the local agency for a stay pursuant to the local agency's adopted procedures. Within 40 days after receiving the application, the local agency shall either stay the time period for up to five years or deny the requested stay. The local agency may, by ordinance, establish procedures for reviewing the requests, including, but not limited to, notice and hearing requirements, appeal procedures, and other administrative requirements.

(d) The expiration of the approved or conditionally approved tentative map shall terminate all proceedings and no final map or parcel map of all or any portion of the real property included within the tentative map shall be filed with the legislative body without first processing a new tentative map. Once a timely filing is made, subsequent actions of the local agency, including, but not limited to, processing, approving, and recording, may lawfully occur after the date of expiration of the tentative map. Delivery to the county surveyor or city engineer shall be deemed a timely filing for purposes of this section.

(e) Upon application of the subdivider filed prior to the expiration of the approved or conditionally approved tentative map, the time at which the map expires pursuant to subdivision (a) may be extended by the legislative body or by an advisory agency authorized to approve or conditionally approve tentative maps for a period or periods not exceeding a total of five years. The period of extension specified in this subdivision shall be in addition to the period of time provided by subdivision (a). Prior to the expiration of an approved or conditionally approved tentative map, upon an application by the subdivider to extend that map, the map shall automatically be extended for 60 days or until the application for the extension is approved, conditionally approved, or denied, whichever occurs first. If the advisory agency denies a subdivider's application for an extension, the subdivider may appeal to the legislative body within 15 days after the advisory agency has denied the extension.

(f) For purposes of this section, a development moratorium includes a water or sewer moratorium, or a water and sewer moratorium, as well as other actions of public agencies which regulate land use, development, or the provision of services to the land, including the public agency with the authority to approve or conditionally approve the tentative map, which thereafter prevents, prohibits, or delays the approval of a final or parcel map. A development moratorium shall also be deemed to exist for purposes of this section for any period of time during which a condition imposed by the city or county could not be satisfied because of either of the following:

(1) The condition was one that, by its nature, necessitated action by the city or county, and the city or county either did not take the necessary action or by its own action or inaction was prevented or delayed in taking the necessary action prior to expiration of the tentative map.

(2) The condition necessitates acquisition of real property or any interest in real property from a public agency, other than the city or county that approved or conditionally approved the tentative map, and that other public agency fails or refuses to convey the property interest necessary to satisfy the condition. However, nothing in this subdivision shall be construed to require any public agency to convey any interest in real property owned by it. A development moratorium specified in this paragraph shall be deemed to have been imposed either on the date of approval or conditional approval of the tentative map, if evidence was included in the public record that the public agency which owns or controls the real property or any interest therein may refuse to convey that property or interest, or on the date that the public agency which owns or controls the real property or any interest therein receives an offer by the subdivider to purchase that property or interest for fair market value, whichever is later. A development moratorium specified in this paragraph shall extend the tentative map up to the maximum period as set forth in subdivision (b), but not later than January 1, 1992, so long as the public agency which owns or controls the real property or any interest therein fails or refuses to convey the necessary property interest, regardless of the reason for the failure or refusal, except that the development moratorium shall be deemed to terminate 60 days after the public agency has officially made, and communicated to the subdivider, a written offer or commitment binding on the agency to convey the necessary property interest for a fair market value, paid in a reasonable time and manner.

SEC. 8.5. Section 66477 of the Government Code is amended to read:

66477. (a) The legislative body of a city or county may, by ordinance, require the dedication of land or impose a requirement of the payment of fees in lieu thereof, or a combination of both, for park or recreational purposes as a condition to the approval of a tentative map or parcel map, if all of the following requirements are met:

(1) The ordinance has been in effect for a period of 30 days prior to the filing of the tentative map of the subdivision or parcel map.

(2) The ordinance includes definite standards for determining the proportion of a subdivision to be dedicated and the amount of any fee to be paid in lieu thereof. The amount of land dedicated or fees paid shall be based upon the residential density, which shall be determined on the basis of the approved or conditionally approved tentative map or parcel map and the average number of persons per household. There shall be a rebuttable presumption that the average

number of persons per household by units in a structure is the same as that disclosed by the most recent available federal census or a census taken pursuant to Chapter 17 (commencing with Section 40200) of Part 2 of Division 3 of Title 4. However, the dedication of land, or the payment of fees, or both, shall not exceed the proportionate amount necessary to provide three acres of park area per 1,000 persons residing within a subdivision subject to this section, unless the amount of existing neighborhood and community park area, as calculated pursuant to this subdivision, exceeds that limit, in which case the legislative body may adopt the calculated amount as a higher standard not to exceed five acres per 1,000 persons residing within a subdivision subject to this section.

(A) The park area per 1,000 members of the population of the city, county, or local public agency shall be derived from the ratio that the amount of neighborhood and community park acreage bears to the total population of the city, county, or local public agency as shown in the most recent available federal census. The amount of neighborhood and community park acreage shall be the actual acreage of existing neighborhood and community parks of the city, county, or local public agency as shown on its records, plans, recreational element, maps, or reports as of the date of the most recent available federal census.

(B) For cities incorporated after the date of the most recent available federal census, the park area per 1,000 members of the population of the city shall be derived from the ratio that the amount of neighborhood and community park acreage shown on the records, maps, or reports of the county in which the newly incorporated city is located bears to the total population of the new city as determined pursuant to Section 11005 of the Revenue and Taxation Code. In making any subsequent calculations pursuant to this section, the county in which the newly incorporated city is located shall not include the figures pertaining to the new city which were calculated pursuant to this paragraph. Fees shall be payable at the time of the recording of the final map or parcel map or at a later time as may be prescribed by local ordinance.

(3) The land, fees, or combination thereof are to be used only for the purpose of developing new or rehabilitating existing neighborhood or community park or recreational facilities to serve the subdivision.

(4) The legislative body has adopted a general plan or specific plan containing policies and standards for parks and recreation facilities, and the park and recreational facilities are in accordance with definite principles and standards.

(5) The amount and location of land to be dedicated or the fees to be paid shall bear a reasonable relationship to the use of the park and recreational facilities by the future inhabitants of the subdivision.

(6) The city, county, or other local public agency to which the land or fees are conveyed or paid shall develop a schedule specifying how,

when, and where it will use the land or fees, or both, to develop park or recreational facilities to serve the residents of the subdivision. Any fees collected under the ordinance shall be committed within five years after the payment of the fees or the issuance of building permits on one-half of the lots created by the subdivision, whichever occurs later. If the fees are not committed, they, without any deductions, shall be distributed and paid to the then record owners of the subdivision in the same proportion that the size of their lot bears to the total area of all lots within the subdivision.

(7) Only the payment of fees may be required in subdivisions containing 50 parcels or less, except that when a condominium project, stock cooperative, or community apartment project, as those terms are defined in Section 1351 of the Civil Code, exceeds 50 dwelling units, dedication of land may be required notwithstanding that the number of parcels may be less than 50.

(8) Subdivisions containing less than five parcels and not used for residential purposes shall be exempted from the requirements of this section. However, in that event, a condition may be placed on the approval of a parcel map that if a building permit is requested for construction of a residential structure or structures on one or more of the parcels within four years, the fee may be required to be paid by the owner of each parcel as a condition of the issuance of the permit.

(9) If the subdivider provides park and recreational improvements to the dedicated land, the value of the improvements together with any equipment located thereon shall be a credit against the payment of fees or dedication of land required by the ordinance.

(b) Land or fees required under this section shall be conveyed or paid directly to the local public agency which provides park and recreational services on a communitywide level and to the area within which the proposed development will be located, if that agency elects to accept the land or fee. The local agency accepting the land or funds shall develop the land or use the funds in the manner provided in this section.

(c) If park and recreational services and facilities are provided by a public agency other than a city or a county, the amount and location of land to be dedicated or fees to be paid shall, subject to paragraph (2) of subdivision (a), be jointly determined by the city or county having jurisdiction and that other public agency.

(d) This section does not apply to commercial or industrial subdivisions or to condominium projects or stock cooperatives that consist of the subdivision of airspace in an existing apartment building that is more than five years old when no new dwelling units are added.

(e) Common interest developments, as defined in Section 1351 of the Civil Code, shall be eligible to receive a credit, as determined by the legislative body, against the amount of land required to be dedicated, or the amount of the fee imposed, pursuant to this section,

for the value of private open space within the development which is usable for active recreational uses.

(f) Park and recreation purposes shall include land and facilities for the activity of "recreational community gardening," which activity consists of the cultivation by persons other than, or in addition to, the owner of the land, of plant material not for sale.

(g) This section shall be known and may be cited as the Quimby Act.

SEC. 9. Section 66498.5 of the Government Code is amended to read:

66498.5. (a) If a subdivider does not seek the rights conferred by this chapter, the filing of a vesting tentative map shall not be a prerequisite to any approval for any proposed subdivision, permit for construction, or work preparatory to construction.

(b) The rights conferred by a vesting tentative map as provided by this chapter shall last for an initial time period, as provided by ordinance, but shall not be less than one year or more than two years beyond the recording of the final map. Where several final maps are recorded on various phases of a project covered by a single vesting tentative map, the one-year initial time period shall begin for each phase when the final map for that phase is recorded.

(c) The initial time period shall be automatically extended by any time used by the local agency for processing a complete application for a grading permit or for design or architectural review, if the time used by the local agency to process the application exceeds 30 days from the date that a complete application is filed. At any time prior to the expiration of the initial time period provided by this section, the subdivider may apply for a one-year extension. If the extension is denied by an advisory agency, the subdivider may appeal that denial to the legislative body within 15 days.

(d) If the subdivider submits a complete application for a building permit during the periods of time specified in subdivision (c), the rights conferred by this chapter shall continue until the expiration of that permit, or any extension of that permit granted by the local agency.

SEC. 10. Section 17959.3 of the Health and Safety Code is amended to read:

17959.3. (a) It is the intent of the Legislature to encourage the use of passive solar energy design. The Legislature recognizes that building code regulations with regard to natural light and ventilation standards have to be modified to permit existing buildings to be retrofitted with passive solar energy.

(b) Notwithstanding Section 17922, any city or county may by ordinance or regulation permit windows required for light and ventilation of habitable rooms in dwellings to open into areas provided with natural light and ventilation which are designed and built to act as passive solar energy collectors.

(c) On or before September 1, 1999, the department shall, after consulting with the State Energy Resources Conservation and Development Commission, prepare, adopt, and submit building standards to implement the provisions of this section for approval as part of the California Building Standards Code pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5.

(d) This section shall remain in effect only until September 1, 1999, and as of that date shall become inoperative, and on January 1, 2000, shall be repealed unless a later enacted statute, which is enacted before September 1, 1999, deletes or extends those dates.

SEC. 11. Section 18035.3 of the Health and Safety Code is amended to read:

18035.3. (a) For every sale by a dealer of a new or used manufactured home or mobilehome, either the purchase order, conditional sale contract, or other document evidencing the purchase thereof, or any attachment to a purchase document signed and dated by the purchaser, shall contain all of the following:

(1) A description of the manufactured home or mobilehome, a description and the cash price of each accessory, structure, or service included with the purchase, and the total cash price for the purchase. The statement shall also state whether the purchase price includes or excludes the towbar, wheels, wheel hubs, tires, and axles and, if they are not included in the purchase price, the price of each shall be listed.

(2) The amount, if any, charged by the dealer for documentary preparation and, if a documentary preparation charge is imposed, a notice advising the purchaser that the charge is not a governmental fee.

(3) A notice in type no smaller than 8-point that complaints concerning the purchase shall be referred to the dealer and, if the complaint is not resolved, may be referred to the Department of Housing and Community Development, Division of Codes and Standards, Occupational Licensing. The notice shall contain the current address and telephone number of the department.

(4) A notice, in at least 10-point boldface type reading as follows:

(A) Do NOT sign the purchase agreement before you read it or if it contains any blank spaces to be filled in.

(B) You are entitled to a completely filled-in copy of that agreement and, if purchasing a manufactured home or mobilehome covered by a warranty, a copy of the warranty.

(5) The name, business address, and contractor's license number of the licensed contractor whom the dealer certifies as performing the installation of the manufactured home or mobilehome pursuant to subdivision (c) of Section 7026.2 of the Business and Professions Code.

(6) The disclosures required by this subdivision need not be contained in the same document.

(b) A failure to disclose pursuant to this section shall not be the basis for rescission of a conditional sales contract.

(c) Notwithstanding any other provision of this part to the contrary, a failure to provide the disclosures specified in paragraph (5) of subdivision (a) is a ground for disciplinary action and not a criminal offense.

(d) If the dealer is also licensed as a real estate broker, the sale of a manufactured home or mobilehome being installed on a foundation system pursuant to Section 18551 may be included in the purchase document for the underlying real property, if the requirements of this section are met.

SEC. 12. Section 18062.2 of the Health and Safety Code is amended to read:

18062.2. It is also unlawful for a dealer to do any of the following:

(a) Engage in the business for which the dealer is licensed without at all times maintaining an established place of business.

(b) Employ any person as a salesperson who is not licensed pursuant to this part, or whose license or 90-day certificate is not displayed on the premises of the dealer as provided in Section 18063.

(c) Permit the use of the dealer's license, supplies, or books by any other person for the purpose of permitting that person to engage in the sale of manufactured homes, mobilehomes, or commercial coaches, or to permit the use of the dealer's license, supplies, or books to operate a secondary location to be used by any other person, if the licensee has no financial or equitable interest or investment in the manufactured homes, mobilehomes, or commercial coaches sold by, or the business of, or secondary location used by, the person, or has no such interest or investment other than commissions, compensations, fees, or any other thing of value received for the use of the dealer's license, supplies, or books to engage in the sale of manufactured homes, mobilehomes, or commercial coaches.

(d) Advertise any specific manufactured home, mobilehome, or commercial coach for sale without identifying the manufactured home, mobilehome, or commercial coach by its serial number or by the number on its federal label or insignia of approval issued by the department.

(e) Advertise the total price of a manufactured home, mobilehome, or commercial coach without including all costs to the purchaser at the time of delivery at the dealer's premises, except sales tax, title and registration fees, finance charges, and any dealer documentary preparation charge. The dealer documentary preparation charge shall not exceed twenty dollars ($20).

(f) Exclude from the advertisement of a manufactured home, mobilehome, or commercial coach for sale information to the effect that there will be added to the advertised total price at the time of sale, charges for sales tax, title and registration fees, escrow fees, and any dealer documentary preparation charge.

(g) Represent the dealer documentary preparation charge as a governmental fee.

(h) Refuse to sell the manufactured home, mobilehome, or commercial coach to any person at the advertised total price for that manufactured home, mobilehome, or commercial coach, exclusive of sales tax, title fee, finance charges, and dealer documentary preparation charge, which charge shall not exceed twenty dollars ($20), while it remains unsold, unless the advertisement states the advertised total price is good only for a specified time and that time has elapsed.

(i) Not post the salesperson's license in a place conspicuous to the public on the premises where they are actually engaged in the selling of manufactured homes, mobilehomes, and commercial coaches for the employing dealer. The license shall be displayed continuously during their employment. If a salesperson's employment is terminated, the dealer shall return the license to the salesperson.

(j) Offer for sale, rent, or lease within this state a new manufactured home, mobilehome, or commercial coach whose manufacturer is not licensed under this part.

(k) To violate Section 798.71 or 798.74 of the Civil Code, or both.

SEC. 13. Section 18070.5 of the Health and Safety Code is amended to read:

18070.5. When the department has caused payment to be made from the fund to a judgment creditor, the department shall be subrogated to the rights of the judgment creditor.

SEC. 14. Section 18202 of the Health and Safety Code is repealed.

SEC. 15. Section 50710.2 is added to the Health and Safety Code, to read:

50710.2. (a) Notwithstanding Section 1941.3 of the Civil Code, the department may delay until December 31, 2000, the installation of window and door locks on the four Office of Migrant Services centers that the department plans to reconstruct. The four centers are Williams in Colusa County, Shafter in Kern County, and Empire and Westley in Stanislaus County.

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

SEC. 16. Section 423.3 of the Revenue and Taxation Code is amended to read:

423.3. Any city or county may allow land subject to an enforceable restriction under the Williamson Act or a migratory waterfowl habitat contract to be assessed in accordance with one or more of the following:

(a) Land specified in subdivision (a) of Section 16142 of the Government Code shall be assessed at the value determined as provided in Section 423, but not to exceed a uniformly applied percentage of its base year value pursuant to Section 110.1, adjusted to reflect the percentage change in the cost of living not to exceed

2 percent per year. In no event shall that percentage be less than 70 percent.

(b) Prime commercial rangeland shall be assessed at the value determined as provided in Section 423, but not to exceed a uniformly applied percentage of its base year value pursuant to Section 110.1, adjusted to reflect the percentage change in the cost of living not to exceed 2 percent per year. In no event shall that percentage be less than 80 percent.

For purposes of this subdivision, "prime commercial rangeland" means rangeland which meets all of the following physical-chemical parameters:

(1) Soil depth of 12 inches or more.

(2) Soil texture of fine sandy loam to clay.

(3) Soil permeability of rapid to slow.

(4) Soil with at least 2.5 inches of available water holding capacity in profile.

(5) A slope of less than 30 percent.

(6) A climate with 80 or more frost-free days per year.

(7) Ten inches or more average annual precipitation.

(8) When managed at potential, the land generally requires less than 17 acres to support one animal unit per year.

Property owners of land specified in this subdivision, shall demonstrate that their land falls within the above definition when requested by the city or county.

(c) Land specified in subdivision (b) of Section 16142 of the Government Code shall be assessed at the value determined as provided in Section 423, but not to exceed a uniformly applied percentage of its base year value pursuant to Section 110.1, adjusted to reflect the percentage change in the cost of living not to exceed 2 percent per year. In no event shall that percentage be less than 90 percent.

(d) Waterfowl habitat shall be assessed at the value determined as provided in Section 423.7 but not to exceed a uniformly applied percentage of its base year value pursuant to Section 110.1, adjusted to reflect the percentage change in the cost of living not to exceed 2 percent per year. In no event shall that percentage be less than 90 percent.

SEC. 17. Section 1.4 of this act shall become operative only if Senate Bill 1156 is chaptered and becomes effective on or before January 1, 1999.

SEC. 18. If Assembly Bill 2055 is chaptered and becomes effective on or before January 1, 1999, Sections 3 and 4 of this act shall not become operative.

CHAPTER 690

An act to amend Sections 51201, 51243, 51243.5, 51255, 51257, 51290, 51290.5, 51291, and 51295 of the Government Code, relating to land use.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 51201 of the Government Code is amended to read:

51201. As used in this chapter, unless otherwise apparent from the context:

(a) "Agricultural commodity" means any and all plant and animal products produced in this state for commercial purposes.

(b) "Agricultural use" means use of land for the purpose of producing an agricultural commodity for commercial purposes.

(c) "Prime agricultural land" means any of the following:

(1) All land that qualifies for rating as class I or class II in the Natural Resource Conservation Service land use capability classifications.

(2) Land which qualifies for rating 80 through 100 in the Storie Index Rating.

(3) Land which supports livestock used for the production of food and fiber and which has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture.

(4) Land planted with fruit- or nut-bearing trees, vines, bushes or crops which have a nonbearing period of less than five years and which will normally return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than two hundred dollars ($200) per acre.

(5) Land which has returned from the production of unprocessed agricultural plant products an annual gross value of not less than two hundred dollars ($200) per acre for three of the previous five years.

(d) "Agricultural preserve" means an area devoted to either agricultural use, as defined in subdivision (b), recreational use as defined in subdivision (n), or open-space use as defined in subdivision (o), or any combination of those uses and which is established in accordance with the provisions of this chapter.

(e) "Compatible use" is any use determined by the county or city administering the preserve pursuant to Section 51231, 51238, or 51238.1 or by this act to be compatible with the agricultural, recreational, or open-space use of land within the preserve and subject to contract. "Compatible use" includes agricultural use, recreational use or open-space use unless the board or council finds

after notice and hearing that the use is not compatible with the agricultural, recreational or open-space use to which the land is restricted by contract pursuant to this chapter.

(f) "Board" means the board of supervisors of a county which establishes or proposes to establish an agricultural preserve or which enters or proposes to enter into a contract on land within an agricultural preserve pursuant to this chapter.

(g) "Council" means the city council of a city which establishes or proposes to establish an agricultural preserve or which enters or proposes to enter into a contract on land within an agricultural preserve pursuant to this chapter.

(h) Except where it is otherwise apparent from the context, "county" or "city" means the county or city having jurisdiction over the land.

(i) A "scenic highway corridor" is an area adjacent to, and within view of, the right-of-way of:

(1) An existing or proposed state scenic highway in the state scenic highway system established by the Legislature pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code and which has been officially designated by the Department of Transportation as an official state scenic highway; or

(2) A county scenic highway established pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code, if each of the following conditions have been met:

(A) The scenic highway is included in an adopted general plan of the county or city; and

(B) The scenic highway corridor is included in an adopted specific plan of the county or city; and

(C) Specific proposals for implementing the plan, including regulation of land use, have been approved by the Advisory Committee on a Master Plan for Scenic Highways, and the county or city highway has been officially designated by the Department of Transportation as an official county scenic highway.

(j) A "wildlife habitat area" is a land or water area designated by a board or council, after consulting with and considering the recommendation of the Department of Fish and Game, as an area of great importance for the protection or enhancement of the wildlife resources of the state.

(k) A "saltpond" is an area which, for at least three consecutive years immediately prior to being placed within an agricultural preserve pursuant to this chapter, has been used for the solar evaporation of sea water in the course of salt production for commercial purposes.

(*l*) A "managed wetland area" is an area, which may be an area diked off from the ocean or any bay, river or stream to which water is occasionally admitted, and which, for at least three consecutive

years immediately prior to being placed within an agricultural preserve pursuant to this chapter, was used and maintained as a waterfowl hunting preserve or game refuge or for agricultural purposes.

(m) A "submerged area" is any land determined by the board or council to be submerged or subject to tidal action and found by the board or council to be of great value to the state as open space.

(n) "Recreational use" is the use of land by the public, with or without charge, for any of the following: walking, hiking, picnicking, camping, swimming, boating, fishing, hunting, or other outdoor games or sports for which facilities are provided for public participation. Any fee charged for the recreational use of land as defined in this subdivision shall be in a reasonable amount and shall not have the effect of unduly limiting its use by the public.

(o) "Open-space use" is the use or maintenance of land in a manner that preserves its natural characteristics, beauty, or openness for the benefit and enjoyment of the public, to provide essential habitat for wildlife, or for the solar evaporation of sea water in the course of salt production for commercial purposes, if the land is within:

(1) A scenic highway corridor, as defined in subdivision (i).

(2) A wildlife habitat area, as defined in subdivision (j).

(3) A saltpond, as defined in subdivision (k).

(4) A managed wetland area, as defined in subdivision (*l*).

(5) A submerged area, as defined in subdivision (m).

SEC. 1.5. Section 51243 of the Government Code is amended to read:

51243. Every contract shall do both of the following:

(a) Provide for the exclusion of uses other than agricultural, and other than those compatible with agricultural uses, for the duration of the contract.

(b) Be binding upon, and inure to the benefit of, all successors in interest of the owner. Whenever land under a contract is divided, the owner of any parcel may exercise, independent of any other owner of a portion of the divided land, any of the rights of the owner in the original contract, including the right to give notice of nonrenewal and to petition for cancellation. The effect of any such action by the owner of a parcel created by the division of land under contract shall not be imputed to the owners of the remaining parcels and shall have no effect on the contract as it applies to the remaining parcels of the divided land. Except as provided in Section 51243.5, on and after the effective date of the annexation by a city of any land under contract with a county, the city shall succeed to all rights, duties, and powers of the county under the contract.

SEC. 2. Section 51243.5 of the Government Code is amended to read:

51243.5. (a) This section shall apply only to land that was within one mile of a city boundary when a contract was executed pursuant

to this article and for which the contract was executed prior to January 1, 1991.

(b) For any proposal that would result in the annexation to a city of any land that is subject to a contract under this chapter, the local agency formation commission shall determine whether the city may exercise its option to not succeed to the rights, duties, and powers of the county under the contract.

(c) In making the determination required by subdivision (b), pursuant to Section 51206, the local agency formation commission may request, and the Department of Conservation shall provide, advice and assistance in interpreting the requirements of this section.

(d) A city may exercise its option to not succeed to the rights, duties, and powers of the county under the contract if both of the following had occurred prior to December 8, 1971:

(1) The land being annexed was within one mile of the city's boundary when the contract was executed.

(2) The city had filed with the county board of supervisors a resolution protesting the execution of the contract.

(e) A city may exercise its option to not succeed to the rights, duties, and powers of the county under the contract if each of the following had occurred prior to January 1, 1991:

(1) The land being annexed was within one mile of the city's boundary when the contract was executed.

(2) The city had filed with the local agency formation commission a resolution protesting the execution of the contract.

(3) The local agency formation commission had held a hearing to consider the city's protest to the contract.

(4) The local agency formation commission had found that the contract would be inconsistent with the publicly desirable future use and control of the land.

(5) The local agency formation commission had approved the city's protest.

(f) It shall be conclusively presumed that no protest was filed by the city unless there is a record of the filing of the protest and the protest identifies the affected contract and the subject parcel. It shall be conclusively presumed that required notice was given before the execution of the contract.

(g) The option of a city to not succeed to a contract shall extend only to that part of the land that was within one mile of the city's boundary when the contract was executed.

(h) If the city exercises its option to not succeed to a contract, then the city shall record a certificate of contract termination with the county recorder at the same time as the executive officer of the local agency formation commission files the certificate of completion pursuant to Section 57203. The certificate of contract termination shall include a legal description of the land for which the city terminates the contract.

SEC. 3. Section 51255 of the Government Code is amended to read:

51255. (a) Notwithstanding any other provision of this chapter, the parties may upon their mutual agreement rescind a contract in order simultaneously to enter into an open-space easement agreement pursuant to the Open-Space Easement Act of 1974 (Chapter 6.6 (commencing with Section 51070)), provided that the easement is consistent with the Williamson Act (this chapter) for the duration of the original Williamson Act contract. The easement would enforceably restrict the same property for an initial term of not less than 10 years and would not be subject to the provisions of Article 4 (commencing with Section 51090) of Chapter 6.6. This action may be taken notwithstanding the prior serving of a notice of nonrenewal, and the land subject to the contract shall be assessed pursuant to Section 423 of the Revenue and Taxation Code.

(b) This section shall not apply to any agreement entered into on or before August 12, 1998.

SEC. 4. Section 51257 of the Government Code is amended to read:

51257. (a) To facilitate a lot line adjustment, pursuant to subdivision (d) of Section 66412, and notwithstanding any other provision of this chapter, the parties may mutually agree to rescind the contract or contracts and simultaneously enter into a new contract or contracts pursuant to this chapter, provided that the board or council finds all of the following:

(1) The new contract or contracts would enforceably restrict the adjusted boundaries of the parcel for an initial term for at least as long as the unexpired term of the rescinded contract or contracts, but for not less than 10 years.

(2) There is no net decrease in the amount of the acreage restricted. In cases where two parcels involved in a lot line adjustment are both subject to contracts rescinded pursuant to this section, this finding will be satisfied if the aggregate acreage of the land restricted by the new contracts is at least as great as the aggregate acreage restricted by the rescinded contracts.

(3) At least 90 percent of the land under the former contract or contracts remains under the new contract or contracts.

(4) After the lot line adjustment, the parcels of land subject to contract will be large enough to sustain their agricultural use, as defined in Section 51222.

(5) The lot line adjustment would not compromise the long-term agricultural productivity of the parcel or other agricultural lands subject to a contract or contracts.

(6) The lot line adjustment is not likely to result in the removal of adjacent land from agricultural use.

(b) Nothing in this section shall limit the authority of the board or council to enact additional conditions or restrictions on lot line adjustments.

(c) Only one new contract may be entered into pursuant to this section with respect to a given parcel, prior to January 1, 2003.

(d) In the year 2002, the department's Williamson Act Status Report, prepared pursuant to Section 51207, shall include a review of the performance of this section.

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

SEC. 5. Section 51290 of the Government Code is amended to read:

51290. (a) It is the policy of the state to avoid, whenever practicable, the location of any federal, state, or local public improvements and any improvements of public utilities, and the acquisition of land therefor, in agricultural preserves.

(b) It is further the policy of the state that whenever it is necessary to locate such an improvement within an agricultural preserve, the improvement shall, whenever practicable, be located upon land other than land under a contract pursuant to this chapter.

(c) It is further the policy of the state that any agency or entity proposing to locate such an improvement shall, in considering the relative costs of parcels of land and the development of improvements, give consideration to the value to the public, as indicated in Article 2 (commencing with Section 51220), of land, and particularly prime agricultural land, within an agricultural preserve.

SEC. 6. Section 51290.5 of the Government Code is amended to read:

51290.5. As used in this chapter, "public improvement" means facilities or interests in real property, including easements, rights-of-way, and interests in fee title, owned by a public agency or person, as defined in subdivision (a) of Section 51291.

SEC. 7. Section 51291 of the Government Code is amended to read:

51291. (a) As used in this section and Sections 51292 and 51295, (1) "public agency" means any department or agency of the United States or the state, and any county, city, school district, or other local public district, agency, or entity, and (2) "person" means any person authorized to acquire property by eminent domain.

(b) Whenever it appears that land within an agricultural preserve may be required by a public agency or person for a public use, the public agency or person shall advise the Director of Conservation and the local governing body responsible for the administration of the preserve of its intention to consider the location of a public improvement within the preserve. In accordance with Section 51290, the notice shall include an explanation of the preliminary consideration of Section 51292, and give a general description, in text or by diagram, of the agricultural preserve land proposed for acquisition, and a copy of any applicable contract created under this chapter. The Director of Conservation shall forward to the Secretary

of Food and Agriculture, a copy of any material received from the public agency or person relating to the proposed acquisition.

Within 30 days thereafter, the Director of Conservation and the local governing body shall forward to the appropriate public agency or person concerned their comments with respect to the effect of the location of the public improvement on the land within the agricultural preserve and those comments shall be considered by the public agency or person. In preparing those comments, the Director of Conservation shall consider issues related to agricultural land use, including, but not limited to, matters related to the effects of the proposal on the conversion of adjacent or nearby agricultural land to nonagricultural uses, and shall consult with, and incorporate the comments of, the Secretary of Food and Agriculture on any other matters related to agricultural operations. The failure of any public agency or person to comply with the requirements of this section shall not invalidate any action by the agency or person to locate a public improvement within an agricultural preserve. However, the failure by any person or public agency, other than a state agency, to comply with the requirements of this section shall be admissible in evidence in any litigation for the acquisition of that land or involving the allocation of funds or the construction of the public improvement. This subdivision does not apply to the erection, construction, alteration, or maintenance of gas, electric, water, or communication utility facilities within an agricultural preserve if that preserve was established after the submission of the location of those facilities to the city or county for review or approval.

(c) When land in an agricultural preserve is acquired by a public entity, the public entity shall notify the Director of Conservation within 10 working days. The notice shall include a general explanation of the decision and the findings made pursuant to Section 51292. If different from that previously provided pursuant to subdivision (b), the notice shall also include a general description, in text or by diagram, of the agricultural preserve land acquired and a copy of any applicable contract created under this chapter.

(d) If, after giving the notice required under subdivisions (b) and (c) and before the project is completed within an agricultural preserve, the public agency or person proposes any significant change in the public improvement, it shall give notice of the changes to the Director of Conservation and the local governing body responsible for the administration of the preserve. Within 30 days thereafter, the Director of Conservation and the local governing body may forward to the public agency or person their comments with respect to the effect of the change to the public improvement on the land within the preserve and the compliance of the changed public improvements with this article. Those comments shall be considered by the public agency or person, if available within the time limits set by this subdivision.

(e) If the notices and findings required by this section and Section 51292 are given and contained within documents prepared pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) those documents may be used to meet the notification and findings requirements of this section and Section 51292, as long as they are provided no later than the times set forth in this section.

Any action or proceeding regarding notices or findings required by this article filed by the Director of Conservation or the local governing body administering the agricultural preserve shall be governed by Section 51294.

SEC. 8. Section 51295 of the Government Code is amended to read:

51295. When any action in eminent domain for the condemnation of the fee title of an entire parcel of land subject to a contract is filed, or when that land is acquired in lieu of eminent domain for a public improvement by a public agency or person, or whenever there is any such action or acquisition by the federal government or any person, instrumentality, or agency acting under the authority or power of the federal government, the contract shall be deemed null and void as to the land actually being condemned, or so acquired as of the date the action is filed, and for the purposes of establishing the value of the land, the contract shall be deemed never to have existed.

Upon the termination of the proceeding, the contract shall be null and void for all land actually taken or acquired.

When an action to condemn or acquire less than all of a parcel of land subject to a contract is commenced, the contract shall be deemed null and void as to the land actually condemned or acquired and shall be disregarded in the valuation process only as to the land actually being taken, unless the remaining land subject to contract will be adversely affected by the condemnation, in which case the value of that damage shall be computed without regard to the contract.

When an action to condemn or acquire an interest that is less than the fee title of an entire parcel or any portion thereof of land subject to a contract is commenced, the contract shall be deemed null and void as to that interest and, for the purpose of establishing the value of only that interest, shall be deemed never to have existed, unless the remaining interests in any of the land subject to the contract will be adversely affected, in which case the value of that damage shall be computed without regard to the contract.

The land actually taken shall be removed from the contract. Under no circumstances shall land be removed that is not actually taken for a public improvement, except that when only a portion of the land or less than a fee interest in the land is taken or acquired, the contract may be canceled with respect to the remaining portion or interest upon petition of either party and pursuant to the provisions of Article 5 (commencing with Section 51280).

For the purposes of this section, a finding by the board or council that no authorized use may be made of the land if the contract is continued on the remaining portion or interest in the land, may satisfy the requirements of subdivision (a) of Section 51282.

If, after acquisition, the acquiring public agency determines that it will not for any reason actually locate on that land or any part thereof, the public improvement for which the land was acquired, before returning the land to private ownership, the public agency shall give written notice to the Director of Conservation and the local governing body responsible for the administration of the preserve, and the land shall be reenrolled in a new contract or encumbered by an enforceable deed restriction with terms at least as restrictive as those provided by this chapter. The duration of the restriction shall be determined by subtracting the length of time the land was held by the acquiring public agency or person from the number of years that remained on the original contract at the time of acquisition.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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

SEC. 10. This act shall become operative only if Senate Bill No. 2227 of the 1997–98 Regular Session becomes effective on or before January 1, 1999.

CHAPTER 691

An act to amend Sections 2571, 17047, 33050, 33590, 33595, 33596, 41601, 46200.5, 46201.5, 56031, 56032, 56050, 56155.5, 56301, 56329, 56343, 56345, 56361, 56363.1, 56364, 56364.1, 56366.3, 56366.4, 56381, 56426, 56501, 56505, 56505.1, 56506, and 56507 of, to amend and renumber Section 56364.5, as added by Chapter 854 of the Statutes of 1997, of, to add Sections 56041.5, 56043, 56302.5, 56341.5, and 56342.5 to, to add Article 3.5 (commencing with Section 56145) and Article 5.6 (commencing with Section 56170) to Chapter 2 of, and to add Article 7 (commencing with Section 56837) to Chapter 7.2 of, Part 30 of, to repeal Sections 33594 and 56365.5 of, to repeal and amend Sections 56001 and 56026 of, and to repeal and add Sections 56205 and 56345.1 of, the Education Code, and to amend Section 7570 of the Government Code, relating to special education.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 2571 of the Education Code, as amended by Chapter 89 of the Statutes of 1998, is amended to read:

2571. The Superintendent of Public Instruction shall make the following computations for each county superintendent of schools:

(a) Add the property tax revenues received for the 1977–78 fiscal year pursuant to subdivisions (b), (c) and (d) of Section 2500, Section 2501 for purposes of Section 1705, Section 2502 for purposes of Section 56811, Section 2505 for special education tuition charges, Section 42909 for purposes of Section 56604, and Section 56364 or Section 56364.2, as applicable. For purposes of this subdivision, section references are to sections effective during the 1977–78 fiscal year.

(b) Divide the sum computed pursuant to subdivision (a) by the total amount of property tax revenues received by the county superintendent of schools for the 1977–78 fiscal year.

(c) Multiply the quotient computed pursuant to subdivision (b) by the total amount of property tax revenues received by the county superintendent of schools for the then current fiscal year.

(d) Subtract the product computed pursuant to subdivision (c) from the total amount of property tax revenues received by the county superintendent of schools for the then current fiscal year.

(e) For purposes of subdivisions (c) and (d), "total property tax revenues" include taxes on the secured roll, taxes on the unsecured roll, prior year taxes and subventions of property taxes.

SEC. 2. Section 17047 of the Education Code, as amended by Chapter 89 of the Statutes of 1998, is amended to read:

17047. (a) The allowable new building area for the purpose of providing special day class and Resource Specialist Program facilities for special education pupils shall be negotiated and approved by the State Allocation Board, with any necessary assistance to be provided by the Special Education Division of the State Department of Education. The square footage allowances shall be computed within the maximum square footage set forth in the following schedule:

Special Day Class Basic Need	Grade Levels	Loading*	Square Footage
Nonsevere Disability —Specific Learning Disability	All	12	1080
—Mildly Mentally Retarded	All	12	1080
—Severe Disorder of Language	All	10	1080

Severe Disability			
—Deaf and Hard of Hearing	All	10	1080
—Visually Impaired	All	10	1330 (1080 + 250 storage)
—Orthopedically and Other Health Impaired	All	12	2000 (1080 + 400 toilets + 250 storage + 270 daily living skills + 3000 therapy + 750 therapy per additional classroom)
—Autistic	All	6	1160 (1080 + 80 toilets)
—Severely Emotionally Disturbed	All	6	1160 (1080 + 80 toilets)
—Severely Mentally Retarded	Elem.	12	1750 (1080 + 400 toilets + 270 daily living skills)
	Secon.		2150 (1080 + 400 toilets + 270 daily living skills + 400 vocational)
—Developmentally Disabled	All	10	2000 (1080 + 400 toilets + 250 storage + 270 daily living skills + 3000 therapy** + 750 therapy per additional CR)
—Deaf−Blind/Multi	All	5	1400 (1080 + 200 storage + 150 toilets)

		Pupils	Square Feet
Resource Specialist Program for those pupils with disabling conditions whose needs have been identified by the Individualized Education Program (IEP) Team, who require special education for a portion of the day, and who are assigned to a regular classroom for a majority of the schoolday.***	All Maximum caseload for RS is 28, not all served at same time.	1–8	240
		9–28	480
		29–37	720
		38–56	960
		57–65	1200
		66–85	1440
		86–94	1680
		95–112	1920

* Special pupils may usually be grouped without accordance to type, especially in smaller districts or where attendance zones may indicate, to maximize loadings per classroom where there are children with similar educational needs (Sec. 56364 or 56364.2, as applicable).

** Therapy add−ons not to be provided if on same site as orthopedically impaired.

*** To a maximum of 4 percent of the unhoused average daily attendance of the district, per new school or addition, to a maximum of 1920 square feet.

(b) The allowable new building area shall be computed by dividing the number of eligible pupils by the minimum required loading per classroom for special day classes for the type of pupils to be enrolled. No new or additional facility shall be provided for special day classes unless the number of additional eligible pupils equals one-third or more of the minimum required loading.

SEC. 3. Section 33050 of the Education Code, as amended by Chapter 89 of the Statutes of 1998, is amended to read:

33050. (a) The governing board of a school district or a county board of education may, on a districtwide or countywide basis or on behalf of one or more of its schools or programs, after a public hearing on the matter, request the State Board of Education to waive all or part of any section of this code or any regulation adopted by the State

Board of Education that implements a provision of this code that may be waived, except:

(1) Article 1 (commencing with Section 15700) and Article 2 (commencing with Section 15780) of Chapter 6 of Part 10.

(2) Chapter 8 (commencing with Section 16000) and Chapter 9 (commencing with Section 16400) of Part 10.

(3) Chapter 22 (commencing with Section 17700), Chapter 23 (commencing with Section 17760), and Chapter 25 (commencing with Section 17785) of Part 10.

(4) Part 13 (commencing with Section 22000).

(5) Section 35735.1.

(6) Paragraph (8) of subdivision (a) of Section 37220.

(7) The following provisions of Part 23:

(A) Chapter 1 (commencing with Section 39000).

(B) Article 1 (commencing with Section 39100) to Article 6 (commencing with Section 39210), inclusive, of Chapter 2.

(C) Section 39248; Sections 39313 to 39325, inclusive; Sections 39360.5 and 39363 and subdivision (a) of Section 39363.5; and Sections 39618 to 39621, inclusive.

(8) Sections 52163, 52165, 52166, and 52178.

(9) Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(10) The identification and assessment criteria relating to any categorical aid program, including Sections 52164.1 and 52164.6.

(11) Sections 41000 to 41360, inclusive; Sections 41420 to 41423, inclusive; Sections 41600 to 41866, inclusive; Sections 41920 to 42911, inclusive; Article 3 (commencing with Section 44930) of Chapter 4 of Part 25; Part 26 (commencing with Section 46000) and Chapter 6 (commencing with Section 48900) and Chapter 6.5 (commencing with Section 49060) of Part 27; or regulations in Title 5 of the California Code of Regulations adopted pursuant to Article 3 (commencing with Section 44930) of Chapter 4 of Part 25.

(12) Section 51513.

(13) Chapter 6.10 (commencing with Section 52120) of Part 28, relating to the Class Size Reduction Program.

(14) Section 56364.1, except that this restriction shall not prohibit the State Board of Education from approving any waiver of Section 56364 or Section 56364.2, as applicable, relating to full inclusion.

(15) Article 4 (commencing with Section 60640) of Chapter 5 of Part 33, relating to the STAR Program, and any other provisions of Chapter 5 (commencing with Section 60600) of Part 33 that establish requirements for the STAR Program.

(b) Any waiver of provisions related to the programs identified in Section 52851 shall be granted only pursuant to Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(c) The waiver of an advisory committee required by law shall be granted only pursuant to Article 4 (commencing with Section 52870) of Chapter 12 of Part 28.

(d) Any request for a waiver submitted by the governing board of a school district or a county board of education pursuant to subdivision (a) shall include a written statement as to (1) whether the exclusive representative of employees, if any, as provided in Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, participated in the development of the waiver and (2) the exclusive representative's position regarding the waiver.

(e) Any request for a waiver submitted pursuant to subdivision (a) relating to a regional occupational center or program established pursuant to Article 1 (commencing with Section 52300) of Chapter 9 of Part 28, that is operated by a joint powers entity established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, shall be submitted as a joint waiver request for each participating school district and shall meet both of the following conditions:

(1) Each joint waiver request shall comply with all of the requirements of this article.

(2) The submission of a joint waiver request shall be approved by a unanimous vote of the governing board of the joint powers agency.

(f) The governing board of any school district requesting a waiver under this section of any provision of Article 5 (commencing with Section 39390) of Chapter 3 of Part 23 shall provide written notice of any public hearing it conducted pursuant to subdivision (a), at least 30 days prior to the hearing, to each public agency identified under Section 39394.

SEC. 4. Section 33590 of the Education Code is amended to read:

33590. (a) There is in the state government the Advisory Commission on Special Education consisting of the following persons:

(1) A Member of the Assembly appointed by the Speaker of the Assembly.

(2) A Member of the Senate appointed by the Senate Committee on Rules.

(3) Three public members appointed by the Speaker of the Assembly, two of whom shall be individuals with a disability or parents of pupils in either a public or private school who have received or are currently receiving special education services due to a disabling condition.

(4) Three public members appointed by the Senate Committee on Rules, two of whom shall be individuals with a disability or parents of pupils in either a public or private school who have received or are currently receiving special education services due to a disabling condition.

(5) Four public members appointed by the Governor, two of whom shall be parents of pupils in either a public or private school who have received or are currently receiving special education services due to a disabling condition.

(6) Five public members appointed by the State Board of Education, upon the recommendation of the Superintendent of Public Instruction or the members of the State Board of Education, three of whom shall be parents of pupils in either a public or private school who have received or are currently receiving special education services due to a disabling condition.

(b) (1) The commission membership shall be selected to ensure that it is a representative group of the state population and shall be composed of individuals involved in, or concerned with, the education of children with disabilities, including parents of children with disabilities; individuals with disabilities; teachers; representatives of higher education that prepare special education and related services personnel; state and local education officials; administrators of programs for children with disabilities; representatives of other state agencies involved in the financing or delivery of related services to children with disabilities; representatives of private school and public charter schools; at least one representative of a vocational community or business organization concerned with the provision of transition services to children with disabilities; and representatives from the juvenile and adult corrections agencies.

(2) The individuals shall be knowledgeable about the wide variety of disabling conditions that require special programs in order to achieve the goal of providing an appropriate education to all eligible pupils.

(3) A majority of the members of the commission shall be individuals with disabilities or parents of children with disabilities.

(c) The commission shall select one of its members to be chairperson of the commission. In addition to other duties, the chairperson shall be responsible for notifying the appointing bodies when a vacancy occurs on the commission, including the type of representative listed in subdivision (b) who is required to be appointed to fill the vacancy.

(d) The term of each public member shall be for four years.

(e) In no event shall any public member serve more than two terms.

SEC. 5. Section 33594 of the Education Code is repealed.

SEC. 6. Section 33595 of the Education Code is amended to read:

33595. (a) The commission shall study and provide assistance and advice to the State Board of Education, the Superintendent of Public Instruction, the Legislature, and the Governor in new or continuing areas of research, program development, and evaluation in special education. The commission shall also do the following:

(1) Comment publicly on any rules or regulations proposed by the state regarding the education of individuals with exceptional needs, as defined in Section 56026.

(2) Advise the Superintendent of Public Instruction in developing evaluations and reporting on data to the Secretary of Education in

the United States Department of Education under Section 1418 of Title 20 of the United States Code.

(3) Advise the Superintendent of Public Instruction in developing corrective action plans to address findings identified in federal monitoring reports under the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

(4) Advise the Superintendent of Public Instruction and the State Board of Education in developing and implementing policies relating to the coordination of services for individuals with exceptional needs.

(b) The commission shall report to the State Board of Education, the Superintendent of Public Instruction, the Legislature, and the Governor not less than once a year on the following with respect to special education:

(1) Activities enumerated in Section 56100 that are necessary to be undertaken regarding special education for individuals with exceptional needs.

(2) The priorities and procedures utilized in the distribution of federal and state funds.

(3) The unmet educational needs of individuals with exceptional needs within the state.

(4) Recommendations relating to providing better education services to individuals with exceptional needs, including, but not limited to, the development, review, and revision, of the definition of "appropriate" as that term is used in the phrase "free and appropriate public education" for the purposes of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

(c) Commission recommendations or requests shall be transmitted by letter from the commission chairperson to the president of the State Board of Education. Each communication shall be placed on the agenda of the next forthcoming state board meeting in accordance with the announced annual state board agenda cutoff dates. Following the state board meeting, the commission shall be notified by the state board as to what action has been taken on each request. Commission requests shall also be transmitted by letter from the commission chairperson to the Superintendent of Public Instruction, the Governor, and to appropriate Members of the Legislature.

SEC. 7. Section 33596 of the Education Code is amended to read:

33596. As used in this article, "commission" means the Advisory Commission on Special Education. The commission shall also serve as the State Advisory Panel required by paragraph (21) of subdivision (a) of Section 1412 of Title 20 of the United States Code.

SEC. 8. Section 41601 of the Education Code, as amended by Chapter 89 of the Statutes of 1998, is amended to read:

41601. For the purposes of this chapter, the governing board of each school district shall report to the Superintendent of Public Instruction during each fiscal year the average daily attendance of

the district for all full school months during (1) the period between July 1 and December 31, inclusive, to be known as the "first period" report for the first principal apportionment, and (2) the period between July 1 and April 15, inclusive, to be known as the "second period" report for the second principal apportionment. Each county superintendent of schools shall report the average daily attendance for the schools and classes maintained by him or her and the average daily attendance for the county school tuition fund.

Each report shall be prepared in accordance with instructions on forms prescribed and furnished by the Superintendent of Public Instruction. Average daily attendance shall be computed in the following manner:

(a) The average daily attendance in the regular elementary, middle, and high schools, including continuation schools and classes, opportunity schools and classes, and special day classes, maintained by the school districts shall be determined by dividing the total number of days of attendance allowed in all full school months in each period by the number of days the schools are actually taught in all full school months in each period, exclusive of Saturdays or Sundays and exclusive of weekend makeup classes pursuant to Section 37223.

(b) The attendance for schools and classes maintained by a county superintendent of schools and the county school tuition fund shall be reported in the same manner as reported by school districts. The average daily attendance in special education classes operated by county superintendents of schools shall be determined in the same manner as all other attendance under subdivision (a). The average daily attendance in all other schools and classes maintained by the county superintendents of schools shall be determined by dividing the total number of days of attendance in all full school months in the first period by a divisor of 70, in the second period by 135 and at annual time by 175. For attendance in special classes and centers pursuant to Section 56364 or Section 56364.2, as applicable, the average daily attendance shall be reported by the county superintendents of schools, but credited for revenue limit purposes to the district in which the pupil resides.

(c) The days of attendance in classes for adults and regional occupational centers programs shall be reported in the same manner as all other attendance under subdivision (a). The average daily attendance in those schools and classes shall be determined by dividing the total number of days of attendance in all full school months in the first period by a divisor of 85 in the second period by 135 and at annual time by 175.

SEC. 9. Section 46200.5 of the Education Code, as amended by Chapter 89 of the Statutes of 1998, is amended to read:

46200.5. (a) In the 1985–86 fiscal year, for each county office of education that certifies to the Superintendent of Public Instruction that it offers 180 days or more of instruction per school year of special day classes pursuant to Section 56364 or Section 56364.2, as applicable,

the Superintendent of Public Instruction shall determine an amount equal to seventy dollars ($70) per unit of current year second principal apportionment average daily attendance for special day classes. This computation shall be included in computations made by the superintendent pursuant to Chapter 7.2 (commencing with Section 56836) of Part 30.

(b) For any county office of education that received an apportionment pursuant to subdivision (a), that offers less than 180 days of instruction in the 1986–87 year or any fiscal year thereafter, and that does not provide the minimum number of instructional minutes specified in subdivision (a) of Section 46201.5 for that fiscal year, the Superintendent of Public Instruction shall reduce the special education apportionment per unit of average daily attendance for that fiscal year by an amount attributable to the increase received pursuant to subdivision (a), as adjusted in fiscal years subsequent to the 1985–86 fiscal year.

SEC. 10. Section 46201.5 of the Education Code, as amended by Chapter 89 of the Statutes of 1998, is amended to read:

46201.5. (a) In each of the 1985–86 and 1986–87 fiscal years, for each county office of education that certifies to the Superintendent of Public Instruction that, for special day classes pursuant to Section 56364 or Section 56364.2, as applicable, it offers at least the amount of instructional time specified in this subdivision, the Superintendent of Public Instruction shall determine an amount equal to eighty dollars ($80) in the 1985–86 fiscal year and forty dollars ($40) in the 1986–87 fiscal year per unit of current year second principal apportionment average daily attendance for special day classes in kindergarten and grades 1 to 8, inclusive, and one hundred sixty dollars ($160) in the 1985–86 fiscal year and eighty dollars ($80) in the 1986–87 fiscal year per unit of current year second principal apportionment average daily attendance for special day classes in grades 9 to 12, inclusive.

This computation shall be included in computations made by the superintendent pursuant to Article 2 (commencing with Section 56836.06) of Chapter 7.2 of Part 30.

(1) In the 1985–86 fiscal year:

(A) 34,500 minutes in kindergarten.

(B) 47,016 minutes in grades 1 to 3, inclusive.

(C) 50,000 minutes in grades 4 to 8, inclusive.

(D) 57,200 minutes in grades 9 to 12, inclusive.

(2) In the 1986–87 fiscal year:

(A) 36,000 minutes in kindergarten.

(B) 50,400 minutes in grades 1 to 3, inclusive.

(C) 54,000 minutes in grades 4 to 8, inclusive.

(D) 64,800 minutes in grades 9 to 12, inclusive.

(b) Each county office of education that receives an apportionment pursuant to subdivision (a) in a fiscal year shall, in the

subsequent fiscal year, add the amount received per pupil to the county office's base special education apportionment.

(c) For each county office of education 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 (1) of subdivision (a) in the 1986–87 fiscal year, or any fiscal year thereafter, the Superintendent of Public Instruction shall reduce the special education apportionment for the fiscal year in which the reduction occurs by an amount attributable to the increase in the 1986–87 fiscal year special education apportionment pursuant to subdivision (b), as adjusted in the 1986–87 fiscal year and fiscal years thereafter.

For each county office of education 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 (2) of subdivision (a) in the 1987–88 fiscal year, or any fiscal year thereafter, the superintendent shall reduce the special education apportionment for the fiscal year in which the reduction occurs by an amount attributable to the increase in the 1987–88 fiscal year special education apportionment pursuant to subdivision (b), as adjusted in the 1987–88 fiscal year and fiscal years thereafter.

SEC. 11. Section 56001 of the Education Code, as amended by Section 29 of Chapter 530 of the Statutes of 1995, is repealed.

SEC. 12. Section 56001 of the Education Code, as amended by Section 28 of Chapter 530 of the Statutes of 1995, is amended to read:

56001. It is the intent of the Legislature that special education programs provide all of the following:

(a) Each individual with exceptional needs is assured an education appropriate to his or her needs in publicly supported programs through completion of his or her prescribed course of study or until the time that he or she has met proficiency standards prescribed pursuant to Sections 51215 and 51216.

(b) By June 30, 1991, early educational opportunities shall be available to all children between the ages of three and five years who require special education and services.

(c) Early educational opportunities shall be made available to children younger than three years of age pursuant to Chapter 4.4 (commencing with Section 56425), appropriate sections of this part, and the California Early Intervention Service Act, Title 14 (commencing with Section 95000) of the Government Code.

(d) Any child younger than three years, potentially eligible for special education, shall be afforded the protections provided pursuant to the California Early Intervention Services Act, Title 14 (commencing with Section 95000) of the Government Code and Section 1439 of Title 20 of the United States Code and implementing regulations.

(e) Each individual with exceptional needs shall have his or her educational goals, objectives, and special education and related services specified in a written individualized education program.

(f) Education programs are provided under an approved local plan for special education that sets forth the elements of the programs in accordance with this part. This plan for special education shall be developed cooperatively with input from the community advisory committee and appropriate representation from special and regular teachers and administrators selected by the groups they represent to ensure effective participation and communication.

(g) Individuals with exceptional needs are offered special assistance programs that promote maximum interaction with the general school population in a manner that is appropriate to the needs of both, taking into consideration, for hard-of-hearing or deaf children, the individual's needs for a sufficient number of age and language mode peers and for special education teachers who are proficient in the individual's primary language mode.

(h) Pupils be transferred out of special education programs when special education services are no longer needed.

(i) The unnecessary use of labels is avoided in providing special education and related services for individuals with exceptional needs.

(j) Procedures and materials for assessment and placement of individuals with exceptional needs shall be selected and administered so as not to be racially, culturally, or sexually discriminatory. No single assessment instrument shall be the sole criterion for determining placement of a pupil. The procedures and materials for assessment and placement shall be in the individual's mode of communication. Procedures and materials for use with pupils of limited English proficiency, as defined in subdivision (m) of Section 52163, shall be in the individual's primary language. All assessment materials and procedures shall be selected and administered pursuant to Section 56320.

(k) Educational programs are coordinated with other public and private agencies, including preschools, child development programs, nonpublic nonsectarian schools, regional occupational centers and programs, and postsecondary and adult programs for individuals with exceptional needs.

(*l*) Psychological and health services for individuals with exceptional needs shall be available to each schoolsite.

(m) Continuous evaluation of the effectiveness of these special education programs by the school district, special education local plan area, or county office shall be made to ensure the highest quality educational offerings.

(n) Appropriate qualified staff are employed, consistent with credentialing requirements, to fulfill the responsibilities of the local plan and positive efforts are made to employ qualified disabled individuals.

(o) Regular and special education personnel are adequately prepared to provide educational instruction and services to individuals with exceptional needs.

SEC. 13. Section 56026 of the Education Code, as amended by Chapter 1296 of the Statutes of 1993, is repealed.

SEC. 14. Section 56026 of the Education Code, as amended by Chapter 530 of the Statutes of 1995, is amended to read:

56026. "Individuals with exceptional needs" means those persons who satisfy all the following:

(a) Identified by an individualized education program team as a child with a disability, as that phrase is defined in clause (ii) of subparagraph (A) of paragraph (3) of Section 1401 of Title 20 of the United States Code.

(b) Their impairment, as described by subdivision (a), requires instruction, services, or both, which cannot be provided with modification of the regular school program.

(c) Come within one of the following age categories:

(1) Younger than three years of age and identified by the district, the special education local plan area, or the county office as requiring intensive special education and services, as defined by the State Board of Education.

(2) Between the ages of three to five years, inclusive, and identified by the district, the special education local plan area, or the county office pursuant to Section 56441.11.

(3) Between the ages of five and 18 years, inclusive.

(4) Between the ages of 19 and 21 years, inclusive; enrolled in or eligible for a program under this part or other special education program prior to his or her 19th birthday; and has not yet completed his or her prescribed course of study or who has not met proficiency standards prescribed pursuant to Sections 51215 and 51216.

(A) Any person who becomes 22 years of age during the months of January to June, inclusive, while participating in a program under this part may continue his or her participation in the program for the remainder of the current fiscal year, including any extended school year program for individuals with exceptional needs established pursuant to regulations adopted by the State Board of Education, pursuant to Article 1 (commencing with Section 56100) of Chapter 2.

(B) Any person otherwise eligible to participate in a program under this part shall not be allowed to begin a new fiscal year in a program if he or she becomes 22 years of age in July, August, or September of that new fiscal year. However, if a person is in a year-round school program and is completing his or her individualized education program in a term that extends into the new fiscal year, then the person may complete that term.

(C) Any person who becomes 22 years of age during the months of October, November, or December while participating in a program under this act shall be terminated from the program on

December 31 of the current fiscal year, unless the person would otherwise complete his or her individualized education program at the end of the current fiscal year.

(D) No school district, special education local plan area, or county office of education may develop an individualized education program that extends these eligibility dates, and in no event may a pupil be required or allowed to attend school under the provisions of this part beyond these eligibility dates solely on the basis that the individual has not met his or her goals or objectives.

(d) Meet eligibility criteria set forth in regulations adopted by the board, including, but not limited to, those adopted pursuant to Article 2.5 (commencing with Section 56333) of Chapter 4.

(e) Unless disabled within the meaning of subdivisions (a) to (d), inclusive, pupils whose educational needs are due primarily to limited English proficiency; a lack of instruction in reading or mathematics; temporary physical disabilities; social maladjustment; or environmental, cultural, or economic factors are not individuals with exceptional needs.

SEC. 15. Section 56031 of the Education Code is amended to read:

56031. "Special education" means specially designed instruction, at no cost to the parent, to meet the unique needs of individuals with exceptional needs, whose educational needs cannot be met with modification of the regular instruction program, and related services, at no cost to the parent, that may be needed to assist these individuals to benefit from specially designed instruction.

Special education is an integral part of the total public education system and provides education in a manner that promotes maximum interaction between children or youth with disabilities and children or youth who are not disabled, in a manner that is appropriate to the needs of both.

Special education provides a full continuum of program options, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education, to meet the educational and service needs of individuals with exceptional needs in the least restrictive environment.

Individuals with exceptional needs shall be grouped for instructional purposes according to their instructional needs.

SEC. 16. Section 56032 of the Education Code is amended to read:

56032. "Individualized education program" means "individualized family service plan" as described in Section 1436 of Title 20 of the United States Code when individualized education program pertains to individuals with exceptional needs younger than three years of age.

SEC. 17. Section 56041.5 is added to the Education Code, to read:

56041.5. When an individual with exceptional needs reaches the age of 18, with the exception of an individual who has been determined to be incompetent under state law, the local educational

agency shall provide any notice of procedural safeguards required by this part to both the individual and the parents of the individual. All other rights accorded to a parent under this part shall transfer to the individual with exceptional needs. The local educational agency shall notify the individual and the parent of the transfer of rights.

SEC. 18. Section 56043 is added to the Education Code, to read:

56043. The primary timelines affecting special education programs are as follows:

(a) A proposed assessment plan shall be developed within 15 calendar days of referral for assessment, not counting calendar days between the pupil's regular school sessions or terms or calendar days of school vacation in excess of five schooldays from the date of receipt of the referral, unless the parent agrees, in writing, to an extension, pursuant to subdivision (a) of Section 56321.

(b) A parent shall have at least 15 calendar days from the receipt of the proposed assessment plan to arrive at a decision, pursuant to subdivision (c) of Section 56321.

(c) A parent shall be notified of the individualized education program meeting early enough to ensure an opportunity to attend, pursuant to subdivision (b) of Section 56341.5.

(d) An individualized education program required as a result of an assessment of a pupil shall be developed within a total time not to exceed 50 calendar days, not counting days between the pupil's regular school sessions, terms, or days of school vacation in excess of five schooldays, from the date of receipt of the parent's written consent for assessment, unless the parent agrees, in writing, to an extension, pursuant to Section 56344.

(e) Beginning at age 14, and updated annually, a statement of the transition service needs of the pupil shall be included in the pupil's individualized education program, pursuant to subdivision (a) of Section 56345.1.

(f) Beginning at age 16, or younger, and annually thereafter, a statement of needed transition services shall be included in the pupil's individualized education program, pursuant to subdivision (b) of Section 56345.1.

(g) A pupil's individualized education program shall be implemented as soon as possible following the individualized education program meeting, pursuant to Section 3040 of Title 5 of the California Code of Regulations.

(h) An individualized education program team shall meet at least annually to review a pupil's progress, the individualized education program, including whether the annual goals for the pupil are being achieved, the appropriateness of the placement, and to make any necessary revisions, pursuant to subdivision (d) of Section 56343, subdivision (a) of Section 56380, and Section 3068 of Title 5 of the California Code of Regulations.

(i) A reassessment of a pupil shall be conducted at least once every three years or more frequently, if conditions warrant a reassessment

and a new individualized education program to be developed, pursuant to Section 56381.

(j) A meeting of an individualized education program team requested by a parent to review an individualized education program pursuant to subdivision (c) of Section 56343 shall be held within 30 calendar days, not counting days in July and August, from the date of receipt of the parent's written request, pursuant to Section 56343.5.

(k) The administrator of a local program under this part shall ensure that the pupil is immediately provided an interim placement for a period not to exceed 30 calendar days whenever a pupil transfers into a school district from a school district not operating programs under the same local plan in which he or she was last enrolled in a special education program pursuant to Section 56325.

(*l*) The parent shall have the right and opportunity to examine all school records of the child and to receive copies within five calendar days after a request is made by the parent, either orally or in writing, pursuant to Section 56504 and Chapter 6.5 (commencing with Section 49060) of Part 27.

(m) Upon receipt of a request from an educational agency where an individual with exceptional needs has enrolled, a former educational agency shall send the pupil's special education records, or a copy thereof, within five working days, pursuant to subdivision (a) of Section 3024 of Title 5 of the California Code of Regulations.

(n) The department shall:

(1) Have a time limit of 60 calendar days after a complaint is filed with the state education agency to investigate the complaint.

(2) Give the complainant the opportunity to submit additional information about the allegations in the complaint.

(3) Review all relevant information and make an independent determination as to whether there is a violation of a requirement of this part or Part B of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

(4) Issue a written decision, pursuant to Section 300.661 of Title 34 of the Code of Federal Regulations.

(o) A prehearing mediation conference shall be scheduled within 15 calendar days of receipt by the superintendent of the request for mediation, and shall be completed within 30 calendar days after the request for mediation, unless both parties to the prehearing mediation conference agree to extend the time for completing the mediation, pursuant to Section 56500.3.

(p) Any request for a due process hearing arising from subdivision (a) of Section 56501 shall be filed within three years from the date the party initiating the request knew or had reason to know of facts underlying the bases for the request, pursuant to subdivision (j) of Section 56505.

(q) The superintendent shall ensure that, within 45 calendar days after receipt of a written due process hearing request, the hearing is

immediately commenced and completed, including any mediation requested at any point during the hearing process, and a final administrative decision is rendered, pursuant to subdivision (a) of Section 56502.

(r) If either party to a due process hearing intends to be represented by an attorney in the due process hearing, notice of that intent shall be given to the other party at least 10 calendar days prior to the hearing, pursuant to subdivision (a) of Section 56507.

(s) Any party to a due process hearing shall have the right to be informed by the other parties to the hearing, at least 10 calendar days prior to the hearing, as to what those parties believe are the issues to be decided at the hearing and their proposed resolution of those issues, pursuant to paragraph (6) of subdivision (e) of Section 56505.

(t) Any party to a due process hearing shall have the right to receive from other parties to the hearing, at least five business days prior to the hearing, a copy of all documents, including all assessments completed by that date, and a list of all witnesses and their general area of testimony that the parties intend to present at the hearing, pursuant to paragraph (7) of subdivision (e) of Section 56505.

(u) An appeal of a due process hearing decision shall be made within 90 calendar days of receipt of the hearing decision, pursuant to subdivision (i) of Section 56505.

(v) When an individualized education program calls for a residential placement as a result of a review by an expanded individualized education program team, the individualized education program shall include a provision for a review, at least every six months, by the full individualized education program team of all of the following pursuant to paragraph (2) of subdivision (c) of Section 7572.5 of the Government Code:

(1) The case progress.

(2) The continuing need for out-of-home placement.

(3) The extent of compliance with the individualized education program.

(4) Progress toward alleviating the need for out-of-home care.

SEC. 19. Section 56050 of the Education Code is amended to read:

56050. (a) For the purposes of this article, "surrogate parent" shall be defined as it is defined in Section 300.515 of Title 34 of the Code of Federal Regulations.

(b) A surrogate parent may represent an individual with exceptional needs in matters relating to identification, assessment, instructional planning and development, educational placement, reviewing and revising the individualized education program, and in other matters relating to the provision of a free appropriate education to the individual. Notwithstanding any other provision of law, this representation shall include the provision of written consent to the individualized education program including nonemergency medical services, mental health treatment services, and occupational

or physical therapy services pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code. The surrogate parent may sign any consent relating to individualized education program purposes.

(c) A surrogate parent shall be held harmless by the State of California when acting in his or her official capacity except for acts or omissions which are found to have been wanton, reckless, or malicious.

(d) A surrogate parent shall also be governed by Section 7579.5 of the Government Code.

SEC. 20. Article 3.5 (commencing with Section 56145) is added to Chapter 2 of Part 30 of the Education Code, to read:

Article 3.5. Charter Schools

56145. Individuals with exceptional needs attending charter schools pursuant to Part 26.8 (commencing with Section 47600) shall be served in the same manner as individuals with exceptional needs are served in other public schools.

56146. It is the intent of the Legislature that local plans for special education local plan areas, adopted pursuant to Chapter 2.5 (commencing with Section 56195), shall provide for federal funds available under Part B of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) to individuals with exceptional needs enrolled in charter schools.

SEC. 21. Section 56155.5 of the Education Code, as amended by Chapter 89 of the Statutes of 1998, is amended to read:

56155.5. (a) As used in this article, "licensed children's institution" means a residential facility that is licensed by the state, or other public agency having delegated authority by contract with the state to license, to provide nonmedical care to children, including, but not limited to, individuals with exceptional needs. "Licensed children's institution" includes a group home as defined by subdivision (g) of Section 80001 of Title 22 of the California Code of Regulations. As used in this article and Article 3 (commencing with Section 56836.16) of Chapter 7.2, a "licensed children's institution" does not include any of the following:

(1) A juvenile court school, juvenile hall, juvenile home, day center, juvenile ranch, or juvenile camp administered pursuant to Article 2.5 (commencing with Section 48645) of Chapter 4 of Part 27.

(2) A county community school program provided pursuant to Section 1981.

(3) Any special education programs provided pursuant to Section 56150.

(4) Any other public agency.

(b) As used in this article, "foster family home" means a family residence that is licensed by the state, or other public agency having delegated authority by contract with the state to license, to provide

24-hour nonmedical care and supervision for not more than six foster children, including, but not limited to, individuals with exceptional needs. "Foster family home" includes a small family home as defined in paragraph (6) of subdivision (a) of Section 1502 of the Health and Safety Code.

SEC. 22. Article 5.6 (commencing with Section 56170) is added to Chapter 2 of Part 30 of the Education Code, to read:

Article 5.6. Children Enrolled in Private Schools

56170. As used in this part, "private school children with disabilities" means children with disabilities enrolled by a parent in private elementary and secondary schools or facilities, other than individuals with exceptional needs placed by a district, special education local plan area, or county office in a nonpublic, nonsectarian school pursuant to Section 56365.

56171. Districts, special education local plan areas, and county offices shall locate, identify, and assess all private school children with disabilities, including religiously affiliated schoolage children, who have disabilities and are in need of special education and related services residing in the jurisdiction of the district, special education local plan area, or county office in accordance with Section 56301.

56172. The district, special education local plan area, or county office shall make provision for the participation of private school children with disabilities in special education programs under this part by providing them with special education and related services in accordance with the provisions of this article.

56173. To meet the requirements of Section 56172, each district, special education local plan area, or county office shall spend on providing special education and related services to private school children with disabilities enrolled by a parent in private elementary and secondary schools, an amount of federal state grant funds allocated to the state under Part B of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) that is equal to a proportionate amount of federal funds made available under the Part B grant program for local assistance.

56174. The district, special education local plan area, or county office shall not be required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if the district, special education local plan area, or county office made a free appropriate public education available to the child and the parent of the child elected to place the child in the private school or facility.

56175. If a parent of a child with a disability, who previously received special education and related services under the authority of the district, special education local plan area, or county office, enrolls the child in a private elementary or secondary school without the consent of or referral by the district, special education local plan

area, or county office, a court or a due process hearing officer may require the district, special education local plan area, or county office to reimburse the parent for the cost of that enrollment if the court or due process hearing officer finds that the district, special education local plan area, or county office had not made a free appropriate public education available to the child in a timely manner prior to that enrollment in the private elementary or secondary school.

56176. The cost of the reimbursement described in Section 56175 may be reduced or denied in the event of any of the following:

(a) At the most recent individualized education program meeting that a parent attended prior to removal of the child from the public school, the parent did not inform the individualized education program team that they were rejecting the placement proposed by the district, special education local plan area, or county office to provide a free appropriate public education to the child, including stating his or her concerns and the intent to enroll the child in a private school at public expense.

(b) The parent did not give written notice to the district, special education local plan area, or county office of the information described in subdivision (a) at least 10 business days, including any holidays that occur on a business day, prior to the removal of the child from the public school.

(c) Prior to the parent's removal of the child from the public school, the district, special education local plan area, or county office informed the parent of its intent to assess the child, including a statement of the purpose of the assessment that was appropriate and reasonable, but the parent did not make the child available for the assessment.

(d) Upon a judicial finding of unreasonableness with respect to actions taken by a parent.

56177. Notwithstanding the notice requirement in subdivision (a) of Section 56176, the cost of reimbursement may not be reduced or denied for failure to provide the notice in the event of any of the following:

(a) The parent is illiterate and cannot write in English.

(b) Compliance with subdivision (a) of Section 56176 would likely result in physical or serious emotional harm to the child.

(c) The school prevented the parent from providing the notice.

(d) The parent had not received notice of the due process hearing rights under Chapter 5 (commencing with Section 56500).

SEC. 23. Section 56205 of the Education Code, as amended by Chapter 89 of the Statutes of 1998, is repealed.

SEC. 24. Section 56205 is added to the Education Code, to read:

56205. (a) Each special education local plan area submitting a local plan to the superintendent under this part shall demonstrate, in conformity with subsection (a) of Section 1412 of, and paragraph (1) of subsection (a) of Section 1413 of, Title 20 of the United States Code, that it has in effect policies, procedures, and programs that are

consistent with state laws, regulations, and policies governing the following:

(1) Free appropriate public education.

(2) Full educational opportunity.

(3) Child find and referral.

(4) Individualized education programs, including development, implementation, review, and revision.

(5) Least restrictive environment.

(6) Procedural safeguards.

(7) Annual and triennial assessments.

(8) Confidentiality.

(9) Transition from Subchapter III (commencing with Section 1431) of Title 20 of the United States Code to the preschool program.

(10) Children in private schools.

(11) Compliance assurances, including general compliance with the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), federal regulations relating thereto, and this part.

(12) (A) A description of the governance and administration of the plan, including identification of the governing body of a multidistrict plan or the individual responsible for administration in a single district plan, and of the elected officials to whom the governing body or individual is responsible.

(B) A description of the regionalized operations and services listed in Section 56836.23 and the direct instructional support provided by program specialists in accordance with Section 56368 to be provided through the plan.

(C) Verification that a community advisory committee has been established pursuant to Section 56190.

(D) Multidistrict plans, submitted pursuant to subdivision (b) or (c) of Section 56195.1, shall do the following:

(i) Specify the responsibilities of each participating county office and district governing board in the policymaking process, the responsibilities of the superintendents of each participating district and county in the implementation of the plan, and the responsibilities of district and county administrators of special education in coordinating the administration of the local plan.

(ii) Identify the respective roles of the administrative unit and the administrator of the special education local plan area and the individual local education agencies within the special education local plan area in relation to the following:

(I) The hiring, supervision, evaluation, and discipline of the administrator of the special education local plan area and staff employed by the administrative unit in support of the local plan.

(II) The allocation from the state of federal and state funds to the special education local plan area administrative unit or to local education agencies within the special education local plan area.

(III) The operation of special education programs.

(IV) Monitoring the appropriate use of federal, state, and local funds allocated for special education programs.

(V) The preparation of program and fiscal reports required of the special education local plan area by the state.

(E) The description of the governance and administration of the plan, and the policymaking process, shall be consistent with subdivision (f) of Section 56001, subdivision (a) of Section 56195.3, and Section 56195.9, and shall reflect a schedule of regular consultations regarding policy and budget development with representatives of special education and regular education teachers and administrators selected by the groups they represent and parent members of the community advisory committee established pursuant to Article 7 (commencing with Section 56190) of Chapter 2.

(13) Copies of joint powers agreements or contractual agreements, as appropriate, for districts and counties that elect to enter into those agreements pursuant to subdivision (b) or (c) of Section 56195.1.

(14) Comprehensive system of personnel development.

(15) Personnel standards, including standards for training and supervision of paraprofessionals.

(16) Performance goals and indicators.

(17) Participation in state and districtwide assessments, and reports relating to assessments.

(18) Supplementation of state, local, and other federal funds, including nonsupplantation of funds.

(19) Maintenance of financial effort.

(20) Opportunities for public participation prior to adoption of policies and procedures.

(21) Suspension and expulsion rates.

(b) Each local plan submitted to the superintendent under this part shall also contain all the following:

(1) An annual budget plan that shall be adopted at a public hearing held by the special education local plan area. Notice of this hearing shall be posted in each school in the local plan area at least 15 days prior to the hearing. The annual budget plan may be revised during any fiscal year according to the policymaking process established pursuant to subparagraph (D) and (E) of paragraph (12) of subdivision (a) and consistent with subdivision (f) of Section 56001 and Section 56195.9. The annual budget plan shall identify expected expenditures for all items required by this part which shall include, but not be limited to, the following:

(A) Funds received in accordance with Chapter 7.2 (commencing with Section 56836).

(B) Administrative costs of the plan.

(C) Special education services to pupils with severe disabilities and low incidence disabilities.

(D) Special education services to pupils with nonsevere disabilities.

(E) Supplemental aids and services to meet the individual needs of pupils placed in regular education classrooms and environments.

(F) Regionalized operations and services, and direct instructional support by program specialists in accordance with Article 6 (commencing with Section 56836.23) of Chapter 7.2.

(G) The use of property taxes allocated to the special education local plan area pursuant to Section 2572.

(2) An annual service plan shall be adopted at a public hearing held by the special education local plan area. Notice of this hearing shall be posted in each school district in the special education local plan area at least 15 days prior to the hearing. The annual service plan may be revised during any fiscal year according to the policymaking process established pursuant to subparagraphs (D) and (E) of paragraph (12) of subdivision (a) and consistent with subdivision (f) of Section 56001 and with Section 56195.9. The annual service plan shall include a description of services to be provided by each district and county office, including the nature of the services and the physical location at which the services will be provided, including alternative schools, charter schools, opportunity schools and classes, community day schools operated by school districts, community schools operated by county offices of education, and juvenile court schools, regardless of whether the district or county office of education is participating in the local plan. This description shall demonstrate that all individuals with exceptional needs shall have access to services and instruction appropriate to meet their needs as specified in their individualized education programs.

(3) A description of programs for early childhood special education from birth through five years of age.

(4) A description of the method by which members of the public, including parents or guardians of individuals with exceptional needs who are receiving services under the plan, may address questions or concerns to the governing body or individual identified in subparagraph (A) of paragraph (12) of subdivision (a).

(5) A description of a dispute resolution process, including mediation and final and binding arbitration to resolve disputes over the distribution of funding, the responsibility for service provision, and the other governance activities specified within the plan.

(6) Verification that the plan has been reviewed by the community advisory committee and that the committee had at least 30 days to conduct this review prior to submission of the plan to the superintendent.

(7) A description of the process being utilized to meet the requirements of Section 56303.

(c) A description of the process being utilized to oversee and evaluate placements in nonpublic, nonsectarian schools and the method of ensuring that all requirements of each pupil's

individualized education program are being met. The description shall include a method for evaluating whether the pupil is making appropriate educational progress.

(d) The local plan, budget plan, and annual service plan shall be written in language that is understandable to the general public.

SEC. 25. Section 56301 of the Education Code is amended to read:

56301. All individuals with disabilities residing in the state, including pupils with disabilities who are enrolled in elementary and secondary schools and private schools, including parochial schools, regardless of the severity of their disabilities, and who are in need of special education and related services, shall be identified, located, and assessed as required by paragraph (3) and clause (ii) of paragraph (10) of subsection (a) of Section 1412 of Title 20 of the United States Code. Each district, special education local plan area, or county office shall establish written policies and procedures for a continuous child-find system which addresses the relationships among identification, screening, referral, assessment, planning, implementation, review, and the triennial assessment. The policies and procedures shall include, but need not be limited to, written notification of all parents of their rights under this chapter, and the procedure for initiating a referral for assessment to identify individuals with exceptional needs. Parents shall be given a copy of their rights and procedural safeguards upon initial referral for assessment, upon notice of an individualized education program meeting or reassessment, upon filing a complaint, and upon filing for a prehearing mediation conference pursuant to Section 56500.3 or a due process hearing request pursuant to Section 56502.

SEC. 26. Section 56302.5 is added to the Education Code, to read:

56302.5. The term "assessment," as used in this chapter, shall have the same meaning as the term "evaluation" in the Individuals with Disabilities Education Act, as provided in Section 1414 of Title 20 of the United States Code.

SEC. 27. Section 56329 of the Education Code is amended to read:

56329. As part of the assessment plan given to parents pursuant to Section 56321, the parent of the pupil shall be provided with a written notice that shall include all of the following information:

(a) Upon completion of the administration of tests and other assessment materials, an individualized education program team meeting, including the parent and his or her representatives, shall be scheduled, pursuant to Section 56341, to determine whether the pupil is an individual with exceptional needs as defined in Section 56026, and to discuss the assessment, the educational recommendations, and the reasons for these recommendations. A copy of the assessment report and the documentation of determination of eligibility shall be given to the parent.

(b) A parent has the right to obtain, at public expense, an independent educational assessment of the pupil from qualified specialists, as defined by regulations of the board, if the parent

disagrees with an assessment obtained by the public education agency.

However, the public education agency may initiate a due process hearing pursuant to Chapter 5 (commencing with Section 56500) to show that its assessment is appropriate. If the final decision resulting from the due process hearing is that the assessment is appropriate, the parent still has the right for an independent educational assessment, but not at public expense.

If the parent obtains an independent educational assessment at private expense, the results of the assessment shall be considered by the public education agency with respect to the provision of free, appropriate public education to the child, and may be presented as evidence at a due process hearing pursuant to Chapter 5 (commencing with Section 56500) regarding the child.

SEC. 28. Section 56341.5 is added to the Education Code, to read:

56341.5. (a) Each district, special education local plan area, or county office convening a meeting of the individualized education program team shall take steps to ensure that one or both of the parents of the individual with exceptional needs are present at each individualized education program meeting or are afforded the opportunity to participate.

(b) Parents shall be notified of the individualized education program meeting early enough to ensure an opportunity to attend.

(c) The individualized education program meeting shall be scheduled at a mutually agreed upon time and place. The notice of the meeting under subdivision (b) shall indicate the purpose, time, and location of the meeting and who shall be in attendance. Parents may also be informed in the notice of the right to bring other people to the meeting who have knowledge or special expertise regarding the individual with exceptional needs.

(d) For an individual with exceptional needs beginning at age 14, or younger, if appropriate, the meeting notice shall also indicate that a purpose of the meeting will be the development of a statement of the transition services needs of the individual required by Section 56345.1, and indicate that the individual with exceptional needs is also invited to attend.

(e) The meeting notice shall also identify any other local agency that shall be invited to send a representative.

(f) If neither parent can attend the meeting, the district, special education local plan area, or county office shall use other methods to ensure parent participation, including individual or conference telephone calls.

(g) A meeting may be conducted without a parent in attendance if the district, special education local plan area, or county office is unable to convince the parent that he or she should attend. In this event, the district, special education local plan area, or county office shall maintain a record of its attempts to arrange a mutually agreed-upon time and place, as follows:

(1) Detailed records of telephone calls made or attempted and the results of those calls.

(2) Copies of correspondence sent to the parents and any responses received.

(3) Detailed records of visits made to the home or place of employment of the parent and the results of those visits.

(h) The district, special education local plan area, or county office shall take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(i) The district, special education local plan area, or county office shall give the parent a copy of the individualized education program.

SEC. 29. Section 56342.5 is added to the Education Code, to read:

56342.5. Each district, special education local plan area, or county office shall ensure that the parent of each individual with exceptional needs is a member of any group that makes decisions on the educational placement of the individual with exceptional needs.

SEC. 30. Section 56343 of the Education Code is amended to read:

56343. An individualized education program team shall meet whenever any of the following occurs:

(a) A pupil has received an initial formal assessment. The team may meet when a pupil receives any subsequent formal assessment.

(b) The pupil demonstrates a lack of anticipated progress.

(c) The parent or teacher requests a meeting to develop, review, or revise the individualized education program.

(d) At least annually, to review the pupil's progress, the individualized education program, including whether the annual goals for the pupil are being achieved, and the appropriateness of placement, and to make any necessary revisions. The individualized education program team conducting the annual review shall consist of those persons specified in subdivision (b) of Section 56341. Other individuals may participate in the annual review if they possess expertise or knowledge essential for the review.

SEC. 31. Section 56345 of the Education Code, as amended by Section 4 of Chapter 1126 of the Statutes of 1994, is amended to read:

56345. (a) The individualized education program is a written statement determined in a meeting of the individualized education program team and shall include, but not be limited to, all of the following:

(1) The present levels of the pupil's educational performance, including the following:

(A) For a schoolage child, how the pupil's disability affects the pupil's involvement and progress in the general curriculum.

(B) For a preschoolage child, as appropriate, how the disability affects the child's participation in appropriate activities.

(2) The measurable annual goals, including benchmarks or short-term objectives related to the following:

(A) Meeting the pupil's needs that result from the pupil's disability to enable the pupil to be involved in and progress in the general curriculum.

(B) Meeting each of the pupil's other educational needs that result from the pupil's disability.

(3) The specific special educational instruction and related services and supplementary aids and services to be provided to the pupil, or on behalf of the pupil, and a statement of the program modifications or supports for school personnel that will be provided for the pupil in order to do the following:

(A) To advance appropriately toward attaining the annual goals.

(B) To be involved and progress in the general curriculum in accordance with subparagraph (A) of paragraph (1) and to participate in extracurricular and other nonacademic activities.

(C) To be educated and participate with other pupils with disabilities and nondisabled pupils in the activities described in this section.

(4) An explanation of the extent, if any, to which the pupil will not participate with nondisabled pupils in regular classes and in the activities described in paragraph (3).

(5) The individual modifications in the administration of state or districtwide assessments of pupil achievement that are needed in order for the pupil to participate in the assessment. If the individualized education program team determines that the pupil will not participate in a particular state or districtwide assessment of pupil achievement (or part of an assessment), a statement of the following:

(A) Why that assessment is not appropriate for the pupil.

(B) How the pupil will be assessed.

(6) The projected date for the beginning of the services and modifications described in paragraph (3), and the anticipated frequency, location, and duration of those services and modifications included in the individualized education program.

(7) Appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the annual goals are being achieved.

(8) Beginning at least one year before the pupil reaches the age of 18, a statement shall be included in the individualized education program that the pupil has been informed of his or her rights under this part, if any, that will transfer to the pupil upon reaching the age of 18 pursuant to Section 56041.5.

(9) A statement of how the pupil's progress toward the annual goals described in paragraph (2) will be measured.

(10) A statement of how the pupil's parents will be regularly informed, at least as often as parents are informed of their nondisabled pupil's progress in the following:

(A) The pupil's progress toward the annual goals described in paragraph (2).

(B) The extent to which that progress is sufficient to enable the pupil to achieve the goals by the end of the year.

(b) When appropriate, the individualized education program shall also include, but not be limited to, all of the following:

(1) For pupils in grades 7 to 12, inclusive, any alternative means and modes necessary for the pupil to complete the district's prescribed course of study and to meet or exceed proficiency standards for graduation in accordance with Section 51215.

(2) For individuals whose primary language is other than English, linguistically appropriate goals, objectives, programs and services.

(3) Extended school year services when needed, as determined by the individualized education program team.

(4) Provision for the transition into the regular class program if the pupil is to be transferred from a special class or center, or nonpublic, nonsectarian school into a regular class in a public school for any part of the schoolday, including the following:

(A) A description of activities provided to integrate the pupil into the regular education program. The description shall indicate the nature of each activity, and the time spent on the activity each day or week.

(B) A description of the activities provided to support the transition of pupils from the special education program into the regular education program.

(5) For pupils with low-incidence disabilities, specialized services, materials, and equipment, consistent with guidelines established pursuant to Section 56136.

(c) It is the intent of the Legislature in requiring individualized education programs that the district, special education local plan area, or county office is responsible for providing the services delineated in the individualized education program. However, the Legislature recognizes that some pupils may not meet or exceed the growth projected in the annual goals and objectives of the pupil's individualized education program.

(d) Pursuant to subdivision (d) of Section 51215, a pupil's individualized education program shall also include the determination of the individualized education program team as to whether differential proficiency standards shall be developed for the pupil. If differential proficiency standards are to be developed, the individualized education program shall include these standards.

(e) Consistent with Section 56000.5 and clause (iv) of subparagraph (B) of paragraph (3) of subsection (d) of Section 1414 of Title 20 of the United States Code, it is the intent of the Legislature that, in making a determination of what constitutes an appropriate education to meet the unique needs of a deaf or hard-of-hearing pupil in the least restrictive environment, the individualized education program team shall consider the related services and program options that provide the pupil with an equal opportunity for communication access. The individualized education program team

shall specifically discuss the communication needs of the pupil, consistent with the guidelines adopted pursuant to Section 56136 and Page 49274 of Volume 57 of the Federal Register, including all of the following:

(1) The pupil's primary language mode and language, which may include the use of spoken language with or without visual cues, or the use of sign language, or a combination of both.

(2) The availability of a sufficient number of age, cognitive, and language peers of similar abilities which may be met by consolidating services into a local plan areawide program or providing placement pursuant to Section 56361.

(3) Appropriate, direct, and ongoing language access to special education teachers and other specialists who are proficient in the pupil's primary language mode and language consistent with existing law regarding teacher training requirements.

(4) Services necessary to ensure communication-accessible academic instructions, school services, and extracurricular activities consistent with the Vocational Rehabilitation Act of 1973 as set forth in Section 794 of Title 29 of the United States Code and the Americans with Disabilities Act of 1990 as set forth in Section 12000, and following, of Title 42 of the United States Code.

(f) No General Fund money made available to school districts or local agencies may be used for any additional responsibilities and services associated with paragraphs (1) and (2) of subdivision (e), including the training of special education teachers and other specialists, even if those additional responsibilities or services are required pursuant to a judicial or state agency determination. Those responsibilities and services shall only be funded by a local educational agency as follows:

(1) The costs of those activities shall be funded from existing programs and funding sources.

(2) Those activities shall be supported by the resources otherwise made available to those programs.

(3) Those activities shall be consistent with the provisions of Sections 56240 to 56243, inclusive.

(g) It is the intent of the Legislature that the communication skills of teachers who work with hard-of-hearing and deaf children be improved; however, nothing in this section shall be construed to remove the local educational agency's discretionary authority in regard to in-service activities.

SEC. 32. Section 56345.1 of the Education Code is repealed.

SEC. 33. Section 56345.1 is added to the Education Code, to read:

56345.1. (a) Beginning at age 14, and updated annually, a statement of the transition service needs of the pupil shall be included in the pupil's individualized education program. The statement shall be included under applicable components of the pupil's individualized education program that focuses on the pupil's

courses of study, such as participation in advanced-placement courses or a vocational education program.

(b) Beginning at age 16 or younger and annually thereafter, in accordance with Section 56462 and paragraph (30) of Section 1401 of Title 20 of the United States Code, a statement of needed transition services shall be included in the pupil's individualized education program, including whenever appropriate, a statement of interagency responsibilities or any needed linkages.

(c) The term "transition services" means a coordinated set of activities for an individual with exceptional needs that does the following:

(1) Is designed within an outcome-oriented process, that promotes movement from school to postschool activities, including postsecondary education, vocational training, integrated employment, including supported employment, continuing and adult education, adult services, independent living, or community participation.

(2) Is based upon the individual pupil's needs, taking into account the pupil's preferences and interests.

(3) Includes instruction, related services, community experiences, the development of employment and other postschool adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

(d) If a participating agency, other than the local educational agency, fails to provide the transition services described in the pupil's individualized education program in accordance with this section, the local educational agency shall reconvene the individualized education program team to identify alternative strategies to meet the transition service needs for the pupil set out in the program.

SEC. 34. Section 56361 of the Education Code, as amended by Chapter 89 of the Statutes of 1998, is amended to read:

56361. The continuum of program options shall include, but not necessarily be limited to, all of the following or any combination of the following:

(a) Regular education programs consistent with subparagraph (A) of paragraph (5) of subsection (a) of Section 1412 of Title 20 of the United States Code and implementing regulations.

(b) A resource specialist program pursuant to Section 56362.

(c) Designated instruction and services pursuant to Section 56363.

(d) Special classes and centers pursuant to Section 56364 or Section 56364.2, as applicable.

(e) Nonpublic, nonsectarian school services pursuant to Section 56365.

(f) State special schools pursuant to Section 56367.

(g) Instruction in settings other than classrooms where specially designed instruction may occur.

(h) Itinerant instruction in classrooms, resource rooms, and settings other than classrooms where specially designed instruction may occur to the extent required by federal law or regulation.

(i) Instruction using telecommunication, and instruction in the home, in hospitals, and in other institutions to the extent required by federal law or regulation.

SEC. 35. Section 56363.1 of the Education Code is amended to read:

56363.1. A district, special education local plan area, or county office is not required to purchase medical equipment for an individual pupil. However, the school district, special education local plan area, or county office is responsible for providing other specialized equipment for use at school that is needed to implement the individualized education program. For purposes of this section, "medical equipment" does not include an assistive technology device, as defined in paragraph (1) of Section 1401 of Title 20 of the United States Code.

SEC. 36. Section 56364 of the Education Code is amended to read:

56364. (a) Special classes that serve pupils with similar and more intensive educational needs shall be available. The special classes may enroll the pupils only when the nature or severity of the disability of the individual with exceptional needs is such that education in the regular classes with the use of supplementary aids and services, including curriculum modification and behavioral support, cannot be achieved satisfactorily. These requirements also apply to separate schooling, or other removal of individuals with exceptional needs from the regular educational environment.

(b) In providing or arranging for the provision of activities, each public agency shall ensure that each individual with exceptional needs participates in those activities with nondisabled pupils to the maximum extent appropriate to the needs of the individual with exceptional needs, including nonacademic and extracurricular services and activities. Special classes shall meet standards adopted by the board.

(c) This section shall not apply to any special education local plan area that has a revised local plan approved pursuant to Section 56836.03. This section shall apply to special education local plan areas that have not had a revised local plan approved pursuant to that section.

(d) This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 37. Section 56364.1 of the Education Code, as amended by Chapter 89 of the Statutes of 1998, is amended to read:

56364.1. Notwithstanding the provisions of Section 56364 or Section 56364.2, as applicable, pupils with low incidence disabilities may receive all or a portion of their instruction in the regular

classroom and may also be enrolled in special classes taught by appropriately credentialed teachers who serve these pupils at one or more schoolsites. The instruction shall be provided in a manner which is consistent with the guidelines adopted pursuant to Section 56136 and in accordance with the individualized education program.

SEC. 38. Section 56364.5 of the Education Code, as added by Chapter 854 of the Statutes of 1997, is amended and renumbered to read:

56364.2. (a) Special classes that serve pupils with similar and more intensive educational needs shall be available. The special classes may enroll pupils only when the nature or severity of the disability of the individual with exceptional needs is such that education in the regular classes with the use of supplementary aids and services, including curriculum modification and behavioral support, cannot be achieved satisfactorily. These requirements also apply to separate schooling, or other removal of individuals with exceptional needs from the regular educational environment.

(b) In providing or arranging for the provision of activities, each public agency shall ensure that each individual with exceptional needs participates in those activities with nondisabled pupils to the maximum extent appropriate to the needs of the individual with exceptional needs, including nonacademic and extracurricular services and activities. Special classes shall meet standards adopted by the board.

(c) This section shall only apply to special education local plan areas that have had a revised local plan approved pursuant to Section 56836.03.

SEC. 39. Section 56365.5 of the Education Code is repealed.

SEC. 40. Section 56366.3 of the Education Code, as amended by Chapter 89 of the Statutes of 1998, is amended to read:

56366.3. (a) No contract for special education and related services provided by a nonpublic, nonsectarian school or agency shall be reimbursed by the state pursuant to Article 4 (commencing with Section 56836.20) of Chapter 7.2 and Section 56836.16 if the contract covers special education and related services, administration, or supervision by an individual who is or was an employee of a contracting district, special education local plan area, or county office within the last 365 days. Former contracting agency personnel may be employed by a nonpublic, nonsectarian school or agency if the personnel were involuntarily terminated or laid off as part of necessary staff reductions from the district, special education local plan area, or county office.

(b) This section does not apply to any person who is able to provide designated instruction and services during the extended school year because he or she is otherwise employed for up to 10 months of the school year by the district, special education local plan area, or county office.

SEC. 41. Section 56366.4 of the Education Code is amended to read:

56366.4. (a) The superintendent may revoke or suspend the certification of a nonpublic, nonsectarian school or agency for any of the following reasons:

(1) Violation of any applicable state or federal rule or regulation, or aiding, abetting, or permitting the violation of any applicable state or federal rule or regulation.

(2) Falsification or intentional misrepresentation of any element of the application, pupil records, or program presented for certification purposes.

(3) Conduct in the operation or maintenance of the nonpublic, nonsectarian school or agency that is harmful to the health, welfare, or safety of an individual with exceptional needs.

(4) Failure to comply with any provision in the contract with the local education entity.

(5) Failure to notify the department in writing of any of the following within 45 days of the occurrence:

(A) Changes in credentialed, licensed, or registered staff who render special education and related services, ownership, management, or control of the nonpublic, nonsectarian school or agency.

(B) Major modification or relocation of facilities.

(C) Significant modification of the nonpublic, nonsectarian school or agency program.

(6) Failure to implement recommendations and compliance requirements following an onsite review of the school or agency.

(7) Failure to provide appropriate services, supplies, equipment, or facilities for a pupil as required in his or her individualized education program.

(8) Failure to notify the superintendent in writing within 10 days of the revocation or suspension of any license or permit including, but not limited to, any residential care license, business license, or other required license or permit.

(9) Failure to implement a pupil's individualized education program.

(10) Failure to notify the superintendent in writing within 10 days of the death of a pupil or any other individual of unnatural causes within the school or agency, including the circumstances surrounding the death and any appropriate preventative measures being taken or recommended.

(b) The superintendent shall notify contracting local education agencies and the special education local plan area in which the nonpublic, nonsectarian school or agency is located of the determination to suspend or revoke state certification.

SEC. 42. Section 56381 of the Education Code is amended to read:

56381. (a) A reassessment of the pupil, based upon procedures specified in Article 2 (commencing with Section 56320) shall be

conducted at least once every three years or more frequently, if conditions warrant a reassessment, or if the pupil's parent or teacher requests a reassessment and a new individualized education program to be developed.

If the reassessment so indicates, a new individualized education program shall be developed.

(b) As part of any reassessment, the individualized education program team and other qualified professionals, as appropriate, shall do the following:

(1) Review existing assessment data on the pupil, current classroom-based assessments and observations, and teacher and related services providers' observations.

(2) On the basis of the review conducted pursuant to paragraph (1), and input from the pupil's parents, identify what additional data, if any, is needed to determine:

(A) Whether the pupil continues to have a disability described in paragraph (3) of Section 1401 of Title 20 of the United States Code.

(B) The present levels of performance and educational needs of the pupil.

(C) Whether the pupil continues to need special education and related services.

(D) Whether any additions or modifications to the special education and related services are needed to enable the pupil to meet the measurable annual goals set out in the individualized education program of the pupil and to participate, as appropriate, in the general curriculum.

(c) The district, special education local plan area, or county office shall administer tests and other assessment materials as may be needed to produce the data identified by the individualized education program team.

(d) If the individualized education program team and other qualified professionals, as appropriate, determine that no additional data is needed to determine whether the pupil continues to be an individual with exceptional needs, the district, special education local plan area, or county office shall notify the pupil's parents of that determination and the reasons for it, and the right of the parents to request an assessment to determine whether the pupil continues to be an individual with exceptional needs; however, the district, special education local plan area, or county office shall not be required to conduct an assessment unless requested to by the pupil's parents.

(e) A district, special education local plan area, or county office shall assess an individual with exceptional needs in accordance with this section and procedures specified in Article 2 (commencing with Section 56320) before determining that the pupil is no longer an individual with exceptional needs.

(f) No reassessment shall be conducted unless the written consent of the parent is obtained prior to reassessment except pursuant to subdivision (e) of Section 56506.

SEC. 43. Section 56426 of the Education Code, as added by Chapter 43 of Chapter 854 of the Statutes of 1997, is amended to read:

56426. An early education program shall include services specially designed to meet the unique needs of infants, from birth to three years of age, and their families. The primary purpose of an early education program is to enhance development of the infant. To meet this purpose, the program shall focus upon the infant and his or her family, and shall include home visits, group services, and family involvement activities. Early education programs funded pursuant to Sections 56427, 56428, and 56432 shall include, as program options, home-based services pursuant to Section 56426.1 and home-based and group services pursuant to Section 56426.2, and shall be provided in accordance with the Individuals with Disabilities Education Act (20 U.S.C. Secs. 1431 to 1445, incl.), and the California Early Intervention Services Act, Title 14 (commencing with Section 95000) of the Government Code.

This section shall become operative on July 1, 1998.

SEC. 44. Section 56501 of the Education Code is amended to read:

56501. (a) The due process hearing procedures prescribed by this chapter extend to the parent, as defined in Section 56028, a pupil who has been emancipated, and a pupil who is a ward or dependent of the court or for whom no parent can be identified or located when the hearing officer determines that either the local educational agency has failed to appoint a surrogate parent as required by Section 7579.5 of the Government Code or the surrogate parent appointed by the local educational agency does not meet the criteria set forth in subdivision (f) of Section 7579.5 of the Government Code, and the public education agency involved in any decisions regarding a pupil. The appointment of a surrogate parent after a hearing has been requested by the pupil shall not be cause for dismissal of the hearing request. The parent and the public education agency involved may initiate the due process hearing procedures prescribed by this chapter under any of the following circumstances:

(1) There is a proposal to initiate or change the identification, assessment, or educational placement of the child or the provision of a free, appropriate public education to the child.

(2) There is a refusal to initiate or change the identification, assessment, or educational placement of the child or the provision of a free, appropriate public education to the child.

(3) The parent refuses to consent to an assessment of the child.

(b) The due process hearing rights prescribed by this chapter include, but are not limited to, all the following:

(1) The right to a mediation conference pursuant to Section 56500.3.

(2) The right to request a mediation conference at any point during the hearing process. A mediation conference shall be scheduled if both parties to the hearing agree to mediate and are willing to extend the 45-day limit for issuing a hearing decision for a

period equal to the length of the mediation process. This limitation on the period of extension is not applicable if the parties agree to take the hearing off calendar. Notwithstanding subdivision (a) of Section 56500.3, attorneys and advocates are permitted to participate in mediation conferences scheduled after the filing of a request for due process hearing.

(3) The right to examine pupil records pursuant to Section 56504. This provision shall not be construed to abrogate the rights prescribed by Chapter 6.5 (commencing with Section 49060) of Part 27.

(4) The right to a fair and impartial administrative hearing at the state level, before a person knowledgeable in the laws governing special education and administrative hearings, under contract with the department, pursuant to Section 56505.

(c) In addition to the rights prescribed by subdivision (b), the parent has the following rights:

(1) The right to have the pupil who is the subject of the state hearing present at the hearing.

(2) The right to open the state hearing to the public.

SEC. 45. Section 56505 of the Education Code is amended to read:

56505. (a) The state hearing shall be conducted in accordance with regulations adopted by the board.

(b) The hearing shall be held at a time and place reasonably convenient to the parent and the pupil.

(c) The hearing shall be conducted by a person knowledgeable in the laws governing special education and administrative hearings pursuant to Section 56504.5. The hearing officer shall encourage the parties to a hearing to consider the option of mediation as an alternative to a hearing.

(d) During the pendency of the hearing proceedings, including the actual state level hearing, the pupil shall remain in his or her present placement, except as provided in Section 48915.5, unless the public agency and the parent agree otherwise. A pupil applying for initial admission to a public school shall, with the consent of his or her parent, be placed in the public school program until all proceedings have been completed.

(e) Any party to the hearing held pursuant to this section shall be afforded the following rights consistent with state and federal statutes and regulations:

(1) The right to be accompanied and advised by counsel and by individuals with special knowledge or training relating to the problems of children and youth with disabilities.

(2) The right to present evidence, written arguments, and oral arguments.

(3) The right to confront, cross-examine, and compel the attendance of witnesses.

(4) The right to a written or electronic verbatim record of the hearing.

(5) The right to written findings of fact and decisions. The findings and decisions shall be made available to the public consistent with the requirements of subsection (c) of Section 1417 of Title 20 of the United States Code and shall also be transmitted to the Advisory Commission on Special Education pursuant to paragraph (4) of subsection (h) of Section 1415 of Title 20 of the United States Code.

(6) The right to be informed by the other parties to the hearing, at least 10 days prior to the hearing, as to what those parties believe are the issues to be decided at the hearing and their proposed resolution of those issues. Upon the request of a parent who is not represented by an attorney, the agency responsible for conducting hearings shall provide a mediator to assist the parent in identifying the issues and the proposed resolution of the issues.

(7) The right to receive from other parties to the hearing, at least five business days prior to the hearing, a copy of all documents and a list of all witnesses and their general area of testimony that the parties intend to present at the hearing. Included in the material to be disclosed to all parties at least five business days prior to a hearing shall be all assessments completed by that date and recommendations based on the assessments that the parties intend to use at the hearing.

(f) The hearing conducted pursuant to this section shall be completed and a written, reasoned decision mailed to all parties to the hearing within 45 days from the receipt by the superintendent of the request for a hearing. Either party to the hearing may request the hearing officer to grant an extension. The extension shall be granted upon a showing of good cause. Any extension shall extend the time for rendering a final administrative decision for a period only equal to the length of the extension.

(g) The hearing conducted pursuant to this section shall be the final administrative determination and binding on all parties.

(h) In decisions relating to the placement of individuals with exceptional needs, the person conducting the state hearing shall consider cost, in addition to all other factors that are considered.

(i) Nothing in this chapter shall preclude a party from exercising the right to appeal the decision to a court of competent jurisdiction. An appeal shall be made within 90 days of receipt of the hearing decision. During the pendency of any administrative or judicial proceeding conducted pursuant to Chapter 5 (commencing with Section 56500), unless the public education agency and the parents of the child agree otherwise, the child involved in the hearing shall remain in his or her present educational placement.

(j) Any request for a due process hearing arising under subdivision (a) of Section 56501 shall be filed within three years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request.

SEC. 46. Section 56505.1 of the Education Code is amended to read:

56505.1. The hearing officer may do any of the following during the hearing:

(a) Question a witness on the record prior to any of the parties doing so.

(b) With the consent of both parties to the hearing, request that conflicting experts discuss an issue or issues with each other while on the record.

(c) Visit the proposed placement site or sites when the physical attributes of the site or sites are at issue.

(d) Call a witness to testify at the hearing if all parties to the hearing consent to the witness giving testimony or the hearing is continued for at least five days after the witness is identified and before the witness testifies.

(e) Order that an impartial assessment of the pupil be conducted for purposes of the hearing and continue the hearing until the assessment has been completed. The cost of any assessment ordered under this subdivision shall be included in the contract between the department and the organization or entity conducting the hearing.

(f) Bar introduction of any documents or the testimony of any witnesses not disclosed to the hearing officer at least five business days prior to the hearing and bar introduction of any documents or the testimony of any witnesses not disclosed to the parties at least five business days prior to the hearing pursuant to paragraph (7) of subdivision (e) of Section 56505.

(g) In decisions relating to the provision of related services by other public agencies, the hearing officer may call as witnesses independent medical specialists qualified to present evidence in the area of the pupil's medical disability. The cost for any witness called to testify under this subdivision shall be included in the contract between the department and the organization or entity conducting the hearing.

SEC. 47. Section 56506 of the Education Code is amended to read:

56506. In addition to the due process hearing rights enumerated in subdivision (b) of 56501, the following due process rights extend to the pupil and the parent:

(a) Written notice to the parent of his or her rights in language easily understood by the general public and in the primary language of the parent or other mode of communication used by the parent, unless to do so is clearly not feasible. The written notice of rights shall include, but not be limited to, those prescribed by Section 56341.

(b) The right to initiate a referral of a child for special education services pursuant to Section 56303.

(c) The right to obtain an independent educational assessment pursuant to subdivision (b) of Section 56329.

(d) The right to participate in the development of the individualized education program and to be informed of the availability under state and federal law of free appropriate public

education and of all available alternative programs, both public and nonpublic.

(e) Written parental consent pursuant to Section 56321 shall be obtained before any assessment of the pupil is conducted unless the public education agency prevails in a due process hearing relating to the assessment. Informed parental consent need not be obtained in the case of a reassessment of the pupil if the local educational agency can demonstrate that it has taken reasonable measures to obtain consent and the pupil's parent has failed to respond.

(f) Written parental consent pursuant to Section 56321 shall be obtained before the pupil is placed in a special education program.

SEC. 48. Section 56507 of the Education Code is amended to read:

56507. (a) If either party to a due process hearing intends to be represented by an attorney in the state hearing, notice of that intent shall be given to the other party at least 10 days prior to the hearing. The failure to provide that notice shall constitute good cause for a continuance.

(b) An award of reasonable attorneys' fees to the prevailing parent, guardian, or pupil, as the case may be, may only be made either with the agreement of the parties following the conclusion of the administrative hearing process or by a court of competent jurisdiction pursuant to paragraph (3) of subsection (i) of Section 1415 of Title 20 of the United States Code.

(c) Public education agencies shall not use federal funds distributed under Part B of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), or other federal special education funds, for the agency's own legal counsel or other advocacy costs, that may include, but are not limited to, a private attorney or employee of an attorney, legal paraprofessional, or other paid advocate, related to a due process hearing or the appeal of a hearing decision to the courts. Nor shall the funds be used to reimburse parents who prevail and are awarded attorneys' fees, pursuant to subdivision (b), as part of the judgment. Nothing in this subdivision shall preclude public agencies from using these funds for attorney services related to the establishment of policy and programs, or responsibilities, under Part B of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and the program administration of these programs. This subdivision does not apply to attorneys and others hired under contract to conduct administrative hearings pursuant to subdivision (a) of Section 56505.

(d) The hearing decision shall indicate the extent to which each party has prevailed on each issue heard and decided, including issues involving other public agencies named as parties to the hearing.

SEC. 49. Article 7 (commencing with Section 56837) is added to Chapter 7.2 of Part 30 of the Education Code, to read:

Article 7. Federal Funding Allocations

56837. In each fiscal year for which the amounts appropriated by the federal government for Part B of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), other than for preschool grants under Section 1419 of Title 20 of the United States Code, reaches four billion nine hundred twenty-four million six hundred seventy-two thousand two hundred dollars ($4,924,672,200) for the various states, the federal funding for local entitlements shall be allocated through the annual Budget Act in the following manner:

(a) The base year amount shall be allocated in a per pupil amount based on the number of pupils that have an individualized education program on December 1 of the fiscal year preceding the fiscal year for which the determination is made. The term "base year" means the federal fiscal year preceding the first fiscal year in which this section applies.

(b) Of the remaining federal funds for local entitlements exceeding the amount calculated for the base year, 85 percent shall be allocated to districts, special education local plan areas, and county offices on the basis of the relative number of pupils enrolled in public and private elementary and secondary schools within the districts', special education local plan areas', and county offices' jurisdiction; and 15 percent shall be allocated to districts, special education local plan areas, and county offices in accordance with the relative number of children living in poverty in the jurisdiction, as determined by the superintendent.

(c) At least 75 percent of the federal grant funds under Part B of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) shall be allocated to districts, special education local plan areas, and county offices.

(d) Until the federal appropriation for Part B of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) reaches four billion nine hundred twenty-four million six hundred seventy-two thousand two hundred dollars ($4,924,672,200), the federal funding for local entitlements shall be allocated on a per pupil amount based on the number of pupils having an individualized education program on December 1 of the fiscal year preceding the fiscal year for which the appropriation is made.

56838. In each fiscal year for which federal funds are received by the state pursuant to Section 1419 of Title 20 of the United States Code for individuals with exceptional needs between the ages of 3 and 5, inclusive, the portion of funds available for local entitlements shall be allocated through the annual Budget Act in the following manner:

(a) The district, special education local plan area, or county office shall receive a base entitlement calculated pursuant to its share of the federal fiscal year 1997 state grant for this program.

(b) Of the remaining federal funds for local entitlements beyond the amount received for the federal fiscal year 1997, 85 percent shall

be allocated to districts, special education local plan areas, and county offices on the basis of the relative number of pupils enrolled in public and private elementary and secondary schools within the jurisdiction of the district, special education local plan area, or county office; and 15 percent shall be allocated to districts, special education local plan areas, and county offices in accordance with the relative number of children in the jurisdiction living in poverty, as determined by the superintendent.

56839. For purposes of Sections 56837 and 56838, the superintendent shall use the most recent population data, including data on children living in poverty, that are available and are satisfactory to the United States Secretary of Education.

56840. The federal funding allocations for local entitlements in Sections 56837 and 56838 shall also apply to state agencies that were eligible to receive federal Part B funds pursuant to subsection (a) of Section 1414 of Title 20 of the United States Code as that provision read prior to the enactment of Public Law 105-17, the Individuals with Disabilities Education Act Amendments of 1997.

56841. (a) Federal funds available through Part B of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and appropriated through the annual Budget Act shall only be used as follows:

(1) For the excess costs of special education.

(2) To supplement state, local, and other federal funds and not supplant those funds.

(b) Except as provided in subdivisions (c) and (d), the funds shall not be used to reduce the level of expenditures for the education of individuals with exceptional needs made by districts, special education local plan areas, and county offices from local funds below the level of those expenditures in the preceding fiscal year.

(c) Notwithstanding subdivision (b), a district, special education local plan area, or county office may reduce the level of expenditures from local funds where the reduction is attributable to the following:

(1) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education personnel.

(2) A decrease in the enrollment of individuals with exceptional needs.

(3) The termination of the obligation of the district, special education local plan area, and county office, consistent with this part, to provide a program of special education to an individual or individuals with exceptional needs.

(4) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of facilities.

(d) Notwithstanding the provisions of subdivisions (a) and (b), for any fiscal year in which the amounts appropriated by Congress for the purposes of Section 1411 of Title 20 of the United States Code exceed four billion one hundred million dollars ($4,100,000,000), a

district, special education local plan area, or county office, may reduce expenditures from local funds for the education of individuals with exceptional needs by an amount that shall not exceed 20 percent of the amount of federal funds available under Part B of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and allocated to the district, special education local plan area, and county office which exceeds the amount of these funds received by the district, special education local plan area, or county office in the preceding fiscal year.

(e) A district, special education local plan area, or county office may reduce expenditures from local funds for the education of individuals with exceptional needs pursuant to subdivision (d) only if the superintendent determines that the district, special education local plan area, or county office is meeting the requirements of this part and the requirements of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) regarding the education of individuals with exceptional needs.

56842. The superintendent shall annually identify and submit to the Director of Finance recommendations for capacity-building and improvement grants for districts, special education local plan areas, or county offices for appropriation through the annual Budget Act. The capacity-building and improvement grants, if approved by the Legislature and the Governor, would be available to districts, special education local plan areas, and county offices pursuant to paragraph (4) of subsection (f) of Section 1411 of Title 20 of the United States Code. The capacity-building and improvement grant recommendations shall be submitted to meet the annual deadline of the Director of Finance for the development of the annual Budget Act.

SEC. 50. Section 7570 of the Government Code is amended to read:

7570. Ensuring maximum utilization of all state and federal resources available to provide a child with a disability, as defined in paragraph (3) of Section 1401 of Title 20 of the United States Code, with a free appropriate public education, the provision of related services, as defined in paragraph (22) of Section 1401 of Title 20 of the United States Code, and designated instruction and services, as defined in Section 56363 of the Education Code, to a child with a disability, shall be the joint responsibility of the Superintendent of Public Instruction and the Secretary of Health and Welfare. The Superintendent of Public Instruction shall ensure that this chapter is carried out through monitoring and supervision.

SEC. 51. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act implements a federal law or regulation and results only in costs mandated by the federal government, 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 692

An act to amend Sections 817 and 1526 of the Penal Code, relating to arrest warrants.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 817 of the Penal Code is amended to read:

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

(2) The warrant of probable cause for arrest shall not begin a complaint process pursuant to Section 740 or 813. The warrant of probable cause for arrest shall have the same authority for service as set forth in Section 840 and the same time limitations as that of an arrest warrant issued pursuant to Section 813.

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

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

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

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

(A) The oath is made during a telephone conversation with the magistrate, after which the declarant shall sign his or her declaration

in support of the warrant of probable cause for arrest. The declarant's signature shall be in the form of a digital signature if electronic mail is used for transmission to the magistrate. The proposed warrant and all supporting declarations and attachments shall then be transmitted to the magistrate utilizing facsimile transmission equipment or electronic mail.

(B) The magistrate shall confirm with the declarant the receipt of the warrant and the supporting declarations and attachments. The magistrate shall verify that all the pages sent have been received, that all pages are legible, and that the declarant's signature, or digital signature, is acknowledged as genuine.

(C) If the magistrate decides to issue the warrant, he or she shall:

(i) Cause the warrant, supporting declarations, and attachments, to be printed if received by electronic mail.

(ii) Sign the warrant.

(iii) Note on the warrant the exact date and time of the issuance of the warrant.

(iv) Indicate on the warrant that the oath of the declarant was administered orally over the telephone.

The completed warrant, as signed by the magistrate, shall be deemed to be the original warrant.

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

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

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

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

County of _____, State of California.

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

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

(name of affiant)

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

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

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

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

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

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

(1) The date and time of service.

(2) The name of the defendant arrested.

(3) The location of the arrest.

(4) The location where the defendant was incarcerated.

SEC. 2. Section 1526 of the Penal Code is amended to read:

1526. (a) The magistrate, before issuing the warrant, may examine on oath the person seeking the warrant and any witnesses the person may produce, and shall take his or her affidavit or their affidavits in writing, and cause the affidavit or affidavits to be subscribed by the party or parties making them.

(b) In lieu of the written affidavit required in subdivision (a), the magistrate may take an oral statement under oath under one of the following conditions:

(1) The oath shall be made under penalty of perjury and recorded and transcribed. The transcribed statement shall be deemed to be an affidavit for the purposes of this chapter. In these cases, the recording of the sworn oral statement and the transcribed statement shall be certified by the magistrate receiving it and shall be filed with the

clerk of the court. In the alternative in these cases, the sworn oral statement shall be recorded by a certified court reporter and the transcript of the statement shall be certified by the reporter, after which the magistrate receiving it shall certify the transcript which shall be filed with the clerk of the court.

(2) The oath is made using telephone and facsimile transmission equipment, or made using telephone and electronic mail, as follows:

(A) The oath is made during a telephone conversation with the magistrate, whereafter the affiant shall sign his or her affidavit in support of the application for the search warrant. The affiant's signature shall be in the form of a digital signature if electronic mail is used for transmission to the magistrate. The proposed search warrant and all supporting affidavits and attachments shall then be transmitted to the magistrate utilizing facsimile transmission equipment or electronic mail.

(B) The magistrate shall confirm with the affiant the receipt of the search warrant and the supporting affidavits and attachments. The magistrate shall verify that all the pages sent have been received, that all pages are legible, and that the affiant's signature or digital signature is acknowledged as genuine.

(C) If the magistrate decides to issue the search warrant, he or she shall:

(i) Cause the warrant, supporting affidavit, and attachments to be printed if received by electronic mail.

(ii) Sign the warrant.

(iii) Note on the warrant the exact date and time of the issuance of the warrant.

(iv) Indicate on the warrant that the oath of the affiant was administered orally over the telephone.

The completed search warrant, as signed by the magistrate, shall be deemed to be the original warrant.

(D) The magistrate shall transmit via facsimile transmission equipment, or via electronic mail, the signed search warrant to the affiant who shall telephonically acknowledge its receipt. The Magistrate shall then telephonically authorize the affiant to write the words "duplicate original" on the copy of the completed search warrant transmitted to the affiant and this document shall be deemed to be a duplicate original search warrant. The original warrant and any affidavits or attachments in support thereof, and any duplicate original warrant, shall be returned as provided in Section 1534.

CHAPTER 693

An act to amend Section 1102 of the Civil Code, relating to property disclosures.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 1102 of the Civil Code is amended to read:

1102. (a) Except as provided in Section 1102.2, this article applies to any transfer by sale, exchange, installment land sale contract, as defined in Section 2985, lease with an option to purchase, any other option to purchase, or ground lease coupled with improvements, of real property, or residential stock cooperative, improved with or consisting of not less than one nor more than four dwelling units.

(b) Except as provided in Section 1102.2, this article shall apply to a resale transaction entered into on or after January 1, 2000, for a manufactured home, as defined in Section 18007 of the Health and Safety Code, which is classified as personal property intended for use as a residence, or a mobilehome, as defined in Section 18008 of the Health and Safety Code, which is classified as personal property intended for use as a residence.

(c) Any waiver of the requirements of this article is void as against public policy.

CHAPTER 694

An act to amend Sections 207.1, 207.5, 209, 210, 851, 871, 871.5, 880, 881, 881.5, 882, 883, 885, 888, 889, 891, and 893 of the Welfare and Institutions Code, relating to juvenile facilities.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 207.1 of the Welfare and Institutions Code is amended to read:

207.1. (a) No court, judge, referee, peace officer, or employee of a detention facility shall knowingly detain any minor in a jail or lockup, except as provided in subdivision (b) or (d).

(b) Any minor who is alleged to have committed an offense described in subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707 whose case is transferred to a court of criminal jurisdiction pursuant to Section 707.1 after a finding is made that he or she is not a fit and proper subject to be dealt with under the juvenile court law, or any minor who has been charged directly in or transferred to a court of criminal jurisdiction pursuant to Section 707.01, may be detained in a jail or other secure facility for the confinement of adults if all of the following conditions are met:

(1) The juvenile court or the court of criminal jurisdiction makes a finding that the minor's further detention in the juvenile hall would endanger the safety of the public or would be detrimental to the other minors in the juvenile hall.

(2) Contact between the minor and adults in the facility is restricted in accordance with Section 208.

(3) The minor is adequately supervised.

(c) A minor who is either found not to be a fit and proper subject to be dealt with under the juvenile court law or who will be transferred to a court of criminal jurisdiction pursuant to Section 707.01, at the time of transfer to a court of criminal jurisdiction or at the conclusion of the fitness hearing, as the case may be, shall be entitled to be released on bail or on his or her own recognizance upon the same circumstances, terms, and conditions as an adult who is alleged to have committed the same offense.

(d) (1) A minor 14 years of age or older who is taken into temporary custody by a peace officer on the basis of being a person described by Section 602, and who, in the reasonable belief of the peace officer, presents a serious security risk of harm to self or others, may be securely detained in a law enforcement facility that contains a lockup for adults, if all of the following conditions are met:

(A) The minor is held in temporary custody for the purpose of investigating the case, facilitating release of the minor to a parent or guardian, or arranging transfer of the minor to an appropriate juvenile facility.

(B) The minor is detained in the law enforcement facility for a period that does not exceed six hours except as provided in subdivision (f).

(C) The minor is informed at the time he or she is securely detained of the purpose of the secure detention, of the length of time the secure detention is expected to last, and of the maximum six-hour period the secure detention is authorized to last. In the event an extension is granted pursuant to subdivision (f), the minor shall be informed of the length of time the extension is expected to last.

(D) Contact between the minor and adults confined in the facility is restricted in accordance with Section 208.

(E) The minor is adequately supervised.

(F) A log or other written record is maintained by the law enforcement agency showing the offense that is the basis for the secure detention of the minor in the facility, the reasons and circumstances forming the basis for the decision to place the minor in secure detention, and the length of time the minor was securely detained.

(2) Any other minor, other than a minor to which paragraph (1) applies, who is taken into temporary custody by a peace officer on the basis that the minor is a person described by Section 602 may be taken to a law enforcement facility that contains a lockup for adults and may be held in temporary custody in the facility for the purposes of

investigating the case, facilitating the release of the minor to a parent or guardian, or arranging for the transfer of the minor to an appropriate juvenile facility. While in the law enforcement facility, the minor may not be securely detained and shall be supervised in a manner so as to ensure that there will be no contact with adults in custody in the facility. If the minor is held in temporary, nonsecure custody within the facility, the peace officer shall exercise one of the dispositional options authorized by Sections 626 and 626.5 without unnecessary delay and, in every case, within six hours.

(3) "Law enforcement facility," as used in this subdivision, includes a police station or a sheriff's station, but does not include a jail, as defined in subdivision (i).

(e) The Board of Corrections shall assist law enforcement agencies, probation departments, and courts with the implementation of this section by doing all of the following:

(1) The board shall advise each law enforcement agency, probation department, and court affected by this section as to its existence and effect.

(2) The board shall make available and, upon request, shall provide, technical assistance to each governmental agency that reported the confinement of a minor in a jail or lockup in calendar year 1984 or 1985. The purpose of this technical assistance is to develop alternatives to the use of jails or lockups for the confinement of minors. These alternatives may include secure or nonsecure facilities located apart from an existing jail or lockup, improved transportation or access to juvenile halls or other juvenile facilities, and other programmatic alternatives recommended by the board. The technical assistance shall take any form the board deems appropriate for effective compliance with this section.

(f) (1) (A) Under the limited conditions of inclement weather, acts of God, or natural disasters that result in the temporary unavailability of transportation, an extension of the six-hour maximum period of detention set forth in paragraph (2) of subdivision (d) may be granted to a county by the Board of Corrections. The extension may be granted only by the board, on an individual, case-by-case basis. If the extension is granted, the detention of minors under those conditions shall not exceed the duration of the special conditions, plus a period reasonably necessary to accomplish transportation of the minor to a suitable juvenile facility, not to exceed six hours after the restoration of available transportation.

(B) A county that receives an extension under this paragraph shall comply with the requirements set forth in subdivision (d). The county also shall provide a written report to the board that specifies when the inclement weather, act of God, or natural disaster ceased to exist, when transportation availability was restored, and when the minor was delivered to a suitable juvenile facility. If the minor was

detained in excess of 24 hours, the board shall verify the information contained in the report.

(2) Under the limited condition of temporary unavailability of transportation, an extension of the six-hour maximum period of detention set forth in paragraph (2) of subdivision (d) may be granted by the board to an offshore law enforcement facility. The extension may be granted only by the board, on an individual, case-by-case basis. If the extension is granted, the detention of minors under those conditions shall extend only until the next available mode of transportation can be arranged.

An offshore law enforcement facility that receives an extension under this paragraph shall comply with the requirements set forth in subdivision (d). The facility also shall provide a written report to the board that specifies when the next mode of transportation became available, and when the minor was delivered to a suitable juvenile facility. If the minor was detained in excess of 24 hours, the board shall verify the information contained in the report.

(3) At least annually, the board shall review and report on extensions sought and granted under this subdivision. If, upon that review, the board determines that a county has sought one or more extensions resulting in the excessive confinement of minors in adult facilities, or that a county is engaged in a pattern and practice of seeking extensions, it shall require the county to submit a detailed explanation of the reasons for the extensions sought and an assessment of the need for a conveniently located and suitable juvenile facility. Upon receiving this information, the board shall make available, and the county shall accept, technical assistance for the purpose of developing suitable alternatives to the confinement of minors in adult lockups.

(g) Any county that did not have a juvenile hall on January 1, 1987, may establish a special purpose juvenile hall, as defined by the Board of Corrections, for the detention of minors for a period not to exceed 96 hours. Any county that had a juvenile hall on January 1, 1987, also may establish, in addition to the juvenile hall, a special purpose juvenile hall. The board shall prescribe minimum standards for that type of facility.

(h) No part of a building or a building complex that contains a jail may be converted or utilized as a secure juvenile facility unless all of the following criteria are met:

(1) The juvenile facility is physically, or architecturally, separate and apart from the jail or lockup such that there could be no contact between juveniles and incarcerated adults.

(2) Sharing of nonresidential program areas only occurs where there are written policies and procedures that assure that there is time-phased use of those areas that prevents contact between juveniles and incarcerated adults.

(3) The juvenile facility has a dedicated and separate staff from the jail or lockup, including management, security, and direct care

staff. Staff who provide specialized services such as food, laundry, maintenance, engineering, or medical services, who are not normally in contact with detainees, or whose infrequent contacts occur under conditions of separation of juveniles and adults, may serve both populations.

(4) The juvenile facility complies with all applicable state and local statutory, licensing, and regulatory requirements for juvenile facilities of its type.

(i) (1) "Jail," as used in this chapter, means a locked facility administered by a law enforcement or governmental agency, the purpose of which is to detain adults who have been charged with violations of criminal law and are pending trial, or to hold convicted adult criminal offenders sentenced for less than one year.

(2) "Lockup," as used in this chapter, means any locked room or secure enclosure under the control of a sheriff or other peace officer that is primarily for the temporary confinement of adults upon arrest.

(3) "Offshore law enforcement facility," as used in this section, means a sheriff's station containing a lockup for adults that is located on an island located at least 22 miles from the California coastline.

(j) Nothing in this section shall be deemed to prevent a peace officer or employee of an adult detention facility or jail from escorting a minor into the detention facility or jail for the purpose of administering an evaluation, test, or chemical test pursuant to Section 23157 of the Vehicle Code, if all of the following conditions are met:

(1) The minor is taken into custody by a peace officer on the basis of being a person described by Section 602 and there is no equipment for the administration of the evaluation, test, or chemical test located at a juvenile facility within a reasonable distance of the point where the minor was taken into custody.

(2) The minor is not locked in a cell or room within the adult detention facility or jail, is under the continuous, personal supervision of a peace officer or employee of the detention facility or jail, and is not permitted to come in contact or remain in contact with in-custody adults.

(3) The evaluation, test, or chemical test administered pursuant to Section 23157 of the Vehicle Code is performed as expeditiously as possible, so that the minor is not delayed unnecessarily within the adult detention facility or jail. Upon completion of the evaluation, test, or chemical test, the minor shall be removed from the detention facility or jail as soon as reasonably possible. No minor shall be held in custody in an adult detention facility or jail under the authority of this paragraph in excess of two hours.

SEC. 2. Section 207.5 of the Welfare and Institutions Code is amended to read:

207.5. Every person who misrepresents or falsely identifies himself or herself either verbally or by presenting any fraudulent written instrument to any probation officer, or to any

superintendent, director, counselor, or employee of a juvenile hall, ranch, or camp for the purpose of securing admission to the premises or grounds of any juvenile hall, ranch, or camp, or to gain access to any minor detained therein, and who would not otherwise qualify for admission or access thereto, is guilty of a misdemeanor.

SEC. 3. Section 209 of the Welfare and Institutions Code is amended to read:

209. (a) The judge of the juvenile court of a county, or, if there is more than one judge, any of the judges of the juvenile court shall, at least annually, inspect any jail, juvenile hall, or special purpose juvenile hall that, in the preceding calendar year, was used for confinement, for more than 24 hours, of any minor.

The judge shall promptly notify the operator of the jail, juvenile hall, or special purpose juvenile hall of any observed noncompliance with minimum standards for juvenile facilities adopted by the Board of Corrections under Section 210. Based on the facility's subsequent compliance with the provisions of subdivisions (d) and (e), the judge shall thereafter make a finding whether the facility is a suitable place for the confinement of minors and shall note the finding in the minutes of the court.

The Board of Corrections shall conduct a biennial inspection of each jail, juvenile hall, lockup, or special purpose juvenile hall situated in this state that, during the preceding calendar year, was used for confinement, for more than 24 hours, of any minor. The board shall promptly notify the operator of any jail, juvenile hall, lockup, or special purpose juvenile hall of any noncompliance found, upon inspection, with any of the minimum standards for juvenile facilities adopted by the Board of Corrections under Section 210 or 210.2.

If either a judge of the juvenile court or the board, after inspection of a jail, juvenile hall, special purpose juvenile hall, or lockup, finds that it is not being operated and maintained as a suitable place for the confinement of minors, the juvenile court or the board shall give notice of its finding to all persons having authority to confine minors pursuant to this chapter and commencing 60 days thereafter the facility shall not be used for confinement of minors until the time the judge or board, as the case may be, finds, after reinspection of the facility that the conditions that rendered the facility unsuitable have been remedied, and the facility is a suitable place for confinement of minors.

The custodian of each jail, juvenile hall, special purpose juvenile hall, and lockup shall make any reports as may be requested by the board or the juvenile court to effectuate the purposes of this section.

(b) The Board of Corrections may inspect any law enforcement facility that contains a lockup for adults and that it has reason to believe may not be in compliance with the requirements of subdivision (d) of Section 207.1 or with the certification requirements or standards adopted under Section 210.2. A judge of

the juvenile court shall conduct an annual inspection, either in person or through a delegated member of the appropriate county or regional juvenile justice commission, of any law enforcement facility that contains a lockup for adults which, in the preceding year, was used for the secure detention of any minor. If the law enforcement facility is observed, upon inspection, to be out of compliance with the requirements of subdivision (d) of Section 207.1, or with any standard adopted under Section 210.2, the board or the judge shall promptly notify the operator of the law enforcement facility of the specific points of noncompliance.

If either the judge or the board finds after inspection that the facility is not being operated and maintained in conformity with the requirements of subdivision (d) of Section 207.1 or with the certification requirements or standards adopted under Section 210.2, the juvenile court or the board shall give notice of its finding to all persons having authority to securely detain minors in the facility, and, commencing 60 days thereafter, the facility shall not be used for the secure detention of a minor until the time the judge or the board, as the case may be, finds, after reinspection, that the conditions that rendered the facility unsuitable have been remedied, and the facility is a suitable place for the confinement of minors in conformity with all requirements of law.

The custodian of each law enforcement facility that contains a lockup for adults shall make any report as may be requested by the board or by the juvenile court to effectuate the purposes of this subdivision.

(c) The board shall collect biennial data on the number, place, and duration of confinements of minors in jails and lockups, as defined in subdivision (i) of Section 207.1, and shall publish biennially this information in the form as it deems appropriate for the purpose of providing public information on continuing compliance with the requirements of Section 207.1.

(d) Except as provided in subdivision (e), a juvenile hall, special purpose juvenile hall, law enforcement facility, or jail shall be unsuitable for the confinement of minors if it is not in compliance with one or more of the minimum standards for juvenile facilities adopted by the Board of Corrections under Section 210 or 210.2, and if, within 60 days of having received notice of noncompliance from the board or the judge of the juvenile court, the juvenile hall, special purpose juvenile hall, law enforcement facility, or jail has failed to file an approved corrective action plan with the Board of Corrections to correct the condition or conditions of noncompliance of which it has been notified. The corrective action plan shall outline how the juvenile hall, special purpose juvenile hall, law enforcement facility, or jail plans to correct the issue of noncompliance and give a reasonable timeframe, not to exceed 90 days, for resolution, that the board shall either approve or deny. In the event the juvenile hall, special purpose juvenile hall, law enforcement facility, or jail fails to

meet its commitment to resolve noncompliance issues outlined in its corrective action plan, the board shall make a determination of suitability at its next scheduled meeting.

(e) Where a juvenile hall is not in compliance with one or more of the minimum standards for juvenile facilities adopted by the Board of Corrections under Section 210, and where the noncompliance arises from sustained occupancy levels that are above the population capacity permitted by applicable minimum standards, the juvenile hall shall be unsuitable for the confinement of minors if the board or the judge of the juvenile court determines that conditions in the facility pose a serious risk to the health, safety, or welfare of minors confined in the facility. In making its determination of suitability, the board or the judge of the juvenile court shall consider, in addition to the noncompliance with minimum standards, the totality of conditions in the juvenile hall, including the extent and duration of overpopulation as well as staffing, program, physical plant, and medical and mental health care conditions in the facility. The Board of Corrections may develop guidelines and procedures for its determination of suitability in accordance with this subdivision and to assist counties in bringing their juvenile halls into full compliance with applicable minimum standards. This subdivision shall not be interpreted to exempt a juvenile hall from having to correct, in accordance with the provisions of subdivision (d), any minimum standard violations that are not directly related to overpopulation of the facility.

SEC. 4. Section 210 of the Welfare and Institutions Code is amended to read:

210. The Board of Corrections shall adopt minimum standards for the operation and maintenance of juvenile halls for the confinement of minors.

SEC. 5. Section 851 of the Welfare and Institutions Code is amended to read:

851. Except as provided in Section 207.1, the juvenile hall shall not be in, or connected with, any jail or prison, and shall not be deemed to be, nor be treated as, a penal institution. It shall be a safe and supportive homelike environment.

SEC. 6. Section 871 of the Welfare and Institutions Code is amended to read:

871. (a) Any person under the custody of a probation officer or any peace officer in a county juvenile hall, or committed to a county juvenile ranch, camp, or forestry camp, or any person being transported to or from a county juvenile hall, ranch, camp, or forestry camp, who escapes or attempts to escape from that place or during transportation to or from that place, is guilty of a misdemeanor, punishable by imprisonment in the county jail not exceeding one year.

(b) Any person who commits any of the acts described in subdivision (a) by use of force or violence shall be punished by

imprisonment in a county jail for not more than one year or by imprisonment in the state prison.

(c) The willful failure of a person under the custody of a probation officer or any peace officer in a county juvenile hall, or committed to a county juvenile ranch camp, or forestry camp, to return to the county juvenile hall, ranch, camp, or forestry camp at the prescribed time while outside or away from the county facility on furlough or temporary release constitutes an escape punishable as provided in subdivision (a). However, a willful failure to return at the prescribed time shall not be considered an escape if the failure to return was reasonable under the circumstances.

(d) A minor who, while under the supervision of a probation officer, removes his or her electronic monitor without authority and who, for more than 48 hours, violates the terms and conditions of his or her probation relating to the proper use of the electronic monitor shall be guilty of a misdemeanor. If an electronic monitor is damaged or discarded while in the possession of the minor, restitution for the cost of replacing the unit may be ordered as part of the punishment.

(e) The liability established by this section shall be limited by the financial ability of the person or persons ordered to pay restitution under this section, who shall, upon request, be entitled to an evaluation and determination of ability to pay under Section 903.45.

SEC. 7. Section 871.5 of the Welfare and Institutions Code is amended to read:

871.5. (a) Except as authorized by law, or when authorized by the person in charge of any county juvenile hall, ranch, camp, or forestry camp, or by an officer of any juvenile hall or camp empowered by the person in charge to give that authorization, any person who knowingly brings or sends into, or who knowingly assists in bringing into, or sending into, any county juvenile hall, ranch, camp, or forestry camp, or any person who while confined in any of those institutions possesses therein, any controlled substance, the possession of which is prohibited by Division 10 (commencing with Section 11000) of the Health and Safety Code, any firearm, weapon, or explosive of any kind, or any tear gas or tear gas weapon shall be punished by imprisonment in a county jail for not more than one year or by imprisonment in the state prison.

(b) Except as otherwise authorized in the manner provided in subdivision (a), any person who knowingly uses tear gas or uses a tear gas weapon in an institution or camp specified in subdivision (a) is guilty of a felony.

(c) A sign shall be posted at the entrance of each county juvenile hall, ranch, camp, or forestry camp specifying the conduct prohibited by this section and the penalties therefor.

(d) Except as otherwise authorized in the manner provided in subdivision (a), any person who knowingly brings or sends into, or who knowingly assists in bringing into, or sending into, any county juvenile hall, ranch, camp, or forestry camp, or any person who while

confined in such an institution knowingly possesses therein, any alcoholic beverage shall be guilty of a misdemeanor.

(e) This section shall not be construed to preclude or in any way limit the applicability of any other law proscribing a course of conduct also proscribed by this section.

SEC. 8. Section 880 of the Welfare and Institutions Code is amended to read:

880. In order to provide appropriate facilities for the housing of wards of the juvenile court in the counties of their residence or in adjacent counties so that those wards may be kept under direct supervision of the court, and in order to more advantageously apply the salutary effect of a safe and supportive home and family environment upon them, and also in order to secure a better classification and segregation of those wards according to their capacities, interests, and responsiveness to control and responsibility, and to give better opportunity for reform and encouragement of self-discipline in those wards, juvenile ranches or camps may be established, as provided in this article.

SEC. 9. Section 881 of the Welfare and Institutions Code is amended to read:

881. The board of supervisors of any county may, by ordinance, establish juvenile ranches, camps, or forestry camps, within or without the county, to which persons made wards of the court on the ground of fitting the description in Section 602 may be committed. As far as possible, the provisions of this chapter relating to commitments to the probation officer shall apply to commitments to those juvenile facilities, except that where any ward proves to be unfit to remain in any facility, in the opinion of the superintendent or director thereof, the superintendent or director shall make a recommendation to the probation department for consideration for other commitment. Complete operation and authority for the administration shall be vested in the county.

SEC. 10. Section 881.5 of the Welfare and Institutions Code is amended to read:

881.5. (a) (1) If a county receives funds pursuant to Section 17602, the county reduces the capacity of its juvenile ranches, camps, or forestry camps below the capacity for those facilities during the 1990–91 fiscal year, and if during the 12-month period subsequent to the month of reduction, there is an increase in the rate of commitments from the county's juvenile court to the Department of the Youth Authority above the commitments per 100,000 of the county's juvenile population, aged 12 to 17 years, during the 1990–91 fiscal year, the county shall contribute to the Department of the Youth Authority an amount equivalent to the actual cost, as determined by the Department of the Youth Authority.

(2) Paragraph (1) shall not apply to a county of the fifth class, for reductions in the capacity of its juvenile ranches, camps, or forestry

camps that were made prior to January 1, 1993, if the reductions were due to fiscal constraints.

(b) Any county that provides juvenile ranch or camp space to another county pursuant to contract shall contribute to the Department of the Youth Authority an amount equivalent to the actual costs associated with any increase in the rate of commitments to which subdivision (a) applies, per 100,000, by the county's juvenile court to the Department of the Youth Authority above the rate of commitments during the 1991–92 fiscal year that are not attributable to a reduced capacity in juvenile ranches, camps, or forestry camps.

(c) The Department of the Youth Authority may notify the Controller of any county or counties that have experienced an increase in the rate of commitments for purposes of recovering the costs associated with that increase. Upon receiving this notice, the Controller shall redirect, from the funds that are provided to that county or counties pursuant to Section 17602, an amount equal to the costs associated with the increased commitments. Within 30 days of the notification of the Controller the Department of the Youth Authority shall also notify each county from which they are seeking reimbursement pursuant to subdivision (b).

SEC. 11. Section 882 of the Welfare and Institutions Code is amended to read:

882. Juvenile ranches, camps or forestry camps shall be in the charge of a superintendent or director and may be established in conjunction with the probation department, or in any manner determined by the county board of supervisors. The superintendent or director and other persons employed at those ranches or camps shall be appointed by the probation officer, subject to confirmation by the board of supervisors, of the county establishing those ranches or camps.

SEC. 12. Section 883 of the Welfare and Institutions Code is amended to read:

883. The wards committed to ranches, camps, or forestry camps may be required to labor on the buildings and grounds thereof, on the making of forest roads for fire prevention or firefighting, on forestation or reforestation of public lands, or on the making of firetrails or firebreaks, or to perform any other work or engage in any studies or activities on or off of the grounds of those ranches, camps, or forestry camps prescribed by the probation department, subject to such approval as the county board of supervisors by ordinance requires.

Wards may not be required to labor in fire suppression when under the age of 16 years.

Wards between the ages of 16 years and 18 years may be required to labor in fire suppression if all of the following conditions are met:

(a) The parent or guardian of the ward has given permission for that labor by the ward.

(b) The ward has completed 80 hours of training in forest firefighting and fire safety, including, but not limited to, the handling of equipment and chemicals, survival techniques, and first aid.

Whenever any ward committed to a camp is engaged in fire prevention work or the suppression of existing fires, he or she shall be subject to worker's compensation benefits to the same extent as a county employee, and the board of supervisors shall provide and cover any ward committed to a camp while performing that service, with accident, death and compensation insurance as is otherwise regularly provided for employees of the county.

SEC. 13. Section 885 of the Welfare and Institutions Code is amended to read:

885. (a) The Board of Corrections shall adopt and prescribe the minimum standards of construction, operation, programs of education and training, and qualifications of personnel for juvenile ranches, camps, or forestry camps established under Section 881.

(b) The Board of Corrections shall conduct a biennial inspection of each juvenile ranch, camp, or forestry camp situated in this state that, during the preceding calendar year, was used for confinement of any minor for more than 24 hours.

(c) The custodian of each juvenile ranch, camp, or forestry camp shall make any reports that may be required by the board to effectuate the purposes of this section.

SEC. 14. Section 888 of the Welfare and Institutions Code is amended to read:

888. Any county establishing a juvenile ranch or camp under the provisions of this article may, by mutual agreement, accept children committed to that ranch or camp by the juvenile court of another county in the state. Two or more counties may, by mutual agreement, establish juvenile ranches or camps, and the rights granted and duties imposed by this article shall devolve upon those counties acting jointly. The provisions of this article shall not apply to any juvenile hall.

SEC. 15. Section 889 of the Welfare and Institutions Code is amended to read:

889. The board of education shall provide for the administration and operation of public schools in any juvenile hall, day center, ranch, camp, regional youth educational facility, or Orange County youth correctional center in existence and providing services prior to the effective date of the amendments to this section made by the Statutes of 1989, established pursuant to Article 2.5 (commencing with Section 48645) of Chapter 4 of Part 27 of the Education Code, or Article 9 (commencing with Section 1850) of Chapter 1 of Division 2.5 of the Welfare and Institutions Code.

SEC. 16. Section 891 of the Welfare and Institutions Code is amended to read:

891. (a) From any state moneys made available to it for that purpose, the Youth Authority shall share in the cost pursuant to this

article of the construction of juvenile ranch camps or forestry camps established after July 1, 1957, and for construction at existing juvenile ranches, camps, or forestry camps, by counties that apply therefor.

(b) "Construction," as used in this section, includes construction of new buildings and acquisition of existing buildings and initial equipment of any of those buildings; and, to the extent provided for in regulations adopted by the Department of the Youth Authority, remodeling of existing buildings owned by the county, to serve the purposes of a juvenile ranch camp or forestry camp, and initial equipment thereof. "Construction" also includes payments made by a county under any lease-purchase agreement or similar arrangement authorized by law and payments for the necessary repair or improvements of property which is leased from the federal government or other public entity without cost to the county for a term of not less than 10 years. It does not include architects' fees or the cost of land acquisition.

(c) The amount of state assistance that shall be provided to any county shall not exceed 50 percent of the project cost approved by the Youth Authority, and, in no event shall it exceed three thousand dollars ($3,000) per bed unit of the new juvenile ranch, camp, or forestry camp or per bed unit added to an existing juvenile ranch camp, or forestry camp, as the case may be. The construction project shall be deemed to have as many bed units as the number of persons it is designed to accommodate, not exceeding 100 bed units for any one project.

(d) Application for state assistance for construction funds under this article shall be made to the Youth Authority in the manner and form prescribed by the Youth Authority. The Youth Authority shall prescribe the time and manner of payment of state assistance, if granted.

SEC. 17. Section 893 of the Welfare and Institutions Code is amended to read:

893. (a) The board of supervisors of any county with a population of five million or more may provide and maintain a school or schools at a juvenile ranch or camp or residential or nonresidential boot camp under the control of the probation officer for the purpose of meeting the special educational needs of wards and dependent children of the juvenile court. The school or schools shall be conducted in a manner and under conditions that will minister to the specific individualized educational and training needs of each ward and dependent child in furtherance of the objective of assisting each of them, as much as possible, to fulfill his or her potential to be a contributing, law-abiding member of society. If the board of supervisors determines that this objective may be promoted as well as or better by provision of educational and training services by a qualified private organization, the board of supervisors on behalf of the county may enter into annual contracts, with or without options to renew, for the provision of those services by that organization.

(b) The Legislature hereby finds and determines that there are persons whose educational and vocational backgrounds and personal leadership qualities peculiarly fit them to instruct and train wards of the court in promotion of the aforesaid objective, but who lack certification qualifications. Accordingly, the probation officer is hereby authorized to certify to the county board of education and the Superintendent of Public Instruction that a person employed or to be employed by the probation officer or by an organization retained by contract to provide vocational training or vocational training courses at or in connection with the school or schools is peculiarly fit to provide wards of the court that vocational training in promotion of the aforesaid objective.

The certification shall specify the type or types of service the person is qualified to provide. Upon filing of that certification, the person shall be deemed to be a certificated employee for purposes of authorizing him or her to provide the services described in the certificate and for apportionment purposes.

(c) The individual school or schools shall have a maximum enrollment of 100 students.

(d) The county superintendent of schools shall report on behalf of the county the average daily attendance for the schools and classes maintained by the county in the school or schools in the manner provided in Sections 41601 and 84701 of the Education Code and other provisions of law.

(e) The Superintendent of Public Instruction shall compute the amount of allowance to be made to the county by reasons of the average daily attendance at the school or schools by multiplying the average daily attendance by the foundation program amount for a high school district that has an average daily attendance of 301 or more during the fiscal year, and shall make allowances based thereon and shall apportion to the county, the allowances so computed in the same manner and at the same times as would be done with respect to allowances and apportionments to the county school service fund.

SEC. 18. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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

CHAPTER 695

An act to amend Sections 214, 254.5, 275.5, 619, and 1605.6 of, to amend and renumber Sections 11472 and 11473 of, to add Sections 11472 and 11475 to, and to repeal and add Section 11471 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 214 of the Revenue and Taxation Code is amended to read:

214. (a) Property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by community chests, funds, foundations or corporations organized and operated for religious, hospital, scientific, or charitable purposes is exempt from taxation, including ad valorem taxes to pay the interest and redemption charges on any indebtedness approved by the voters prior to July 1, 1978, or any bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition, if:

(1) The owner is not organized or operated for profit. However, in the case of hospitals, the organization shall not be deemed to be organized or operated for profit if, during the immediately preceding fiscal year, operating revenues, exclusive of gifts, endowments and grants-in-aid, did not exceed operating expenses by an amount equivalent to 10 percent of those operating expenses. As used herein, operating expenses include depreciation based on cost of replacement and amortization of, and interest on, indebtedness.

(2) No part of the net earnings of the owner inures to the benefit of any private shareholder or individual.

(3) The property is used for the actual operation of the exempt activity, and does not exceed an amount of property reasonably necessary to the accomplishment of the exempt purpose.

(A) For the purposes of determining whether the property is used for the actual operation of the exempt activity, consideration shall not be given to use of the property for either or both of the following described activities if that use is occasional:

(i) The owner conducts fundraising activities on the property and the proceeds derived from those activities are not unrelated business taxable income, as defined in Section 512 of the Internal Revenue Code, of the owner and are used to further the exempt activity of the owner.

(ii) The owner permits any other organization that meets all of the requirements of this subdivision, other than ownership of the

property, to conduct fundraising activities on the property and the proceeds derived from those activities are not unrelated business taxable income, as defined in Section 512 of the Internal Revenue Code, of the organization, are not subject to the tax on unrelated business taxable income that is imposed by Section 511 of the Internal Revenue Code, and are used to further the exempt activity of the organization.

(B) For purposes of subparagraph (A):

(i) "Occasional use" means use of the property on an irregular or intermittent basis by the qualifying owner or any other qualifying organization described in clause (ii) of subparagraph (A) that is incidental to the primary activities of the owner or the other organization.

(ii) "Fundraising activities" means both activities involving the direct solicitation of money or other property and the anticipated exchange of goods or services for money between the soliciting organization and the organization or person solicited.

(C) Subparagraph (A) shall have no application in determining whether paragraph (3) has been satisfied unless the owner of the property and any other organization using the property as provided in subparagraph (A) have filed with the assessor duplicate copies of valid unrevoked letters or rulings from the Internal Revenue Service that state that the owner and the other organization qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code. The owner of the property and any other organization using the property as provided in subparagraph (A) also shall file duplicate copies of their most recently filed federal income tax returns.

(D) For the purposes of determining whether the property is used for the actual operation of the exempt activity, consideration shall not be given to the use of the property for meetings conducted by any other organization if the meetings are incidental to the other organization's primary activities, are not fundraising meetings or activities as defined in subparagraph (B), are held no more than once per week, and the other organization and its use of the property meet all other requirements of paragraphs (1) to (5), inclusive, of subdivision (a). The owner or the other organization also shall file with the assessor duplicate copies of valid, unrevoked letters or rulings from the Internal Revenue Service or the Franchise Tax Board stating that the other organization, or the national organization of which it is a local chapter or affiliate, qualifies as an exempt organization under Section 501(c)(3) or Section 501(c)(4) of the Internal Revenue Code or Section 23701d, 23701f, or 23701w, together with duplicate copies of that organization's most recently filed federal income tax return, if the organization is required by federal law to file a return.

Nothing in subparagraph (A), (B), (C), or (D) shall be construed to either enlarge or restrict the exemption provided for in subdivision

(b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(4) The property is not used or operated by the owner or by any other person so as to benefit any officer, trustee, director, shareholder, member, employee, contributor, or bondholder of the owner or operator, or any other person, through the distribution of profits, payment of excessive charges or compensations, or the more advantageous pursuit of their business or profession.

(5) The property is not used by the owner or members thereof for fraternal or lodge purposes, or for social club purposes except where that use is clearly incidental to a primary religious, hospital, scientific, or charitable purpose.

(6) The property is irrevocably dedicated to religious, charitable, scientific, or hospital purposes and upon the liquidation, dissolution or abandonment of the owner will not inure to the benefit of any private person except a fund, foundation, or corporation organized and operated for religious, hospital, scientific, or charitable purposes.

(7) The property, if used exclusively for scientific purposes, is used by a foundation or institution that, in addition to complying with the foregoing requirements for the exemption of charitable organizations in general, has been chartered by the Congress of the United States (except that this requirement shall not apply when the scientific purposes are medical research), and whose objects are the encouragement or conduct of scientific investigation, research, and discovery for the benefit of the community at large.

The exemption provided for herein shall be known as the "welfare exemption." This exemption shall be in addition to any other exemption now provided by law, and the existence of the exemption provision in paragraph (2) of subdivision (a) of Section 202 shall not preclude the exemption under this section for museum or library property. Except as provided in subdivision (e), this section shall not be construed to enlarge the college exemption.

(b) Property used exclusively for school purposes of less than collegiate grade and owned and operated by religious, hospital, or charitable funds, foundations, or corporations, which property and funds, foundations, or corporations meet all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(c) Property used exclusively for nursery school purposes and owned and operated by religious, hospital, or charitable funds, foundations, or corporations, which property and funds, foundations, or corporations meet all the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(d) Property used exclusively for a noncommercial educational FM broadcast station or an educational television station, and owned

and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations meeting all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(e) Property used exclusively for religious, charitable, scientific, or hospital purposes and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations or educational institutions of collegiate grade, as defined in Section 203, which property and funds, foundations, corporations, or educational institutions meet all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section. As to educational institutions of collegiate grade, as defined in Section 203, the requirements of paragraph (6) of subdivision (a) shall be deemed to be met if both of the following are met:

(1) The property of the educational institution is irrevocably dedicated in its articles of incorporation to charitable and educational purposes, to religious and educational purposes, or to educational purposes.

(2) The articles of incorporation of the educational institution provide for distribution of its property upon its liquidation, dissolution, or abandonment to a fund, foundation, or corporation organized and operated for religious, hospital, scientific, charitable, or educational purposes meeting the requirements for exemption provided by Section 203 or this section.

(f) Property used exclusively for housing and related facilities for elderly or handicapped families and financed by, including, but not limited to, the federal government pursuant to Section 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q), as amended, Section 231 of Public Law 73-479 (12 U.S.C. Sec. 1715v), Section 236 of Public Law 90-448 (12 U.S.C. Sec. 1715z), or Section 811 of Public Law 101-625 (42 U.S.C. Sec. 8013), and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations meeting all of the requirements of this section shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section. The amendment of this paragraph made by Chapter 1102 of the Statutes of 1984 does not constitute a change in, but is declaratory of, the existing law. However, no refund of property taxes shall be required as a result of this amendment for any fiscal year prior to the fiscal year in which the amendment takes effect.

Property used exclusively for housing and related facilities for elderly or handicapped families at which supplemental care or services designed to meet the special needs of elderly or handicapped residents are not provided, or that is not financed by the federal government pursuant to Section 202 of Public Law 86-372 (12 U.S.C.

Sec. 1701q), as amended, Section 231 of Public Law 73-479 (12 U.S.C. Sec. 1715v), Section 236 of Public Law 90-448 (12 U.S.C. Sec. 1715z), or Section 811 of Public Law 101-625 (42 U.S.C. Sec. 8013), shall not be entitled to exemption pursuant to this subdivision unless the property is used for housing and related facilities for low- and moderate-income elderly or handicapped families. Property that would otherwise be exempt pursuant to this subdivision, except that it includes some housing and related facilities for other than low- or moderate-income elderly or handicapped families, shall be entitled to a partial exemption. The partial exemption shall be equal to that percentage of the value of the property that is equal to the percentage that the number of low- and moderate-income elderly and handicapped families occupying the property represents of the total number of families occupying the property.

As used in this subdivision, "low and moderate income" has the same meaning as the term "persons and families of low or moderate income" as defined by Section 50093 of the Health and Safety Code.

(g) (1) Property used exclusively for rental housing and related facilities and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations, including limited partnerships in which the managing general partner is an eligible nonprofit corporation, meeting all of the requirements of this section, or by veterans' organizations, as described in Section 215.1, meeting all the requirements of paragraphs (1) to (7), inclusive, of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section and shall be entitled to a partial exemption equal to that percentage of the value of the property that the portion of the property serving lower income households represents of the total property in any year in which any of the following criteria are applicable:

(A) Twenty percent or more of the occupants of the property are lower income households whose rent does not exceed that prescribed by Section 50053 of the Health and Safety Code.

(B) The acquisition, rehabilitation, development, or operation of the property, or any combination of these factors, is financed with tax-exempt mortgage revenue bonds or general obligation bonds, or is financed by local, state, or federal loans or grants and the rents of the occupants who are lower income households do not exceed those prescribed by deed restrictions or regulatory agreements pursuant to the terms of the financing or financial assistance.

(C) The owner of the property is eligible for and receives low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code of 1986, as added by Public Law 99-514.

(2) In order to be eligible for the exemption provided by this subdivision, the owner of the property shall do both of the following:

(A) Certify and ensure that there is a deed restriction, agreement, or other legal document that restricts the project's usage and that

provides that the units designated for use by lower income households are continuously available to or occupied by lower income households at rents that do not exceed those prescribed by Section 50053 of the Health and Safety Code, or, to the extent that the terms of federal, state, or local financing or financial assistance conflicts with Section 50053, rents that do not exceed those prescribed by the terms of the financing or financial assistance.

(B) Certify that the funds that would have been necessary to pay property taxes are used to maintain the affordability of, or reduce rents otherwise necessary for, the units occupied by lower income households.

(3) As used in this subdivision, "lower income households" has the same meaning as the term "lower income households" as defined by Section 50079.5 of the Health and Safety Code.

(h) Property used exclusively for an emergency or temporary shelter and related facilities for homeless persons and families and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations meeting all of the requirements of this section shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section. Property that otherwise would be exempt pursuant to this subdivision, except that it includes housing and related facilities for other than an emergency or temporary shelter, shall be entitled to a partial exemption.

As used in this subdivision, "emergency or temporary shelter" means a facility that would be eligible for funding pursuant to Chapter 11 (commencing with Section 50800) of Part 2 of Division 31 of the Health and Safety Code.

(i) Property used exclusively for housing and related facilities for employees of religious, charitable, scientific, or hospital organizations that meet all the requirements of subdivision (a) and owned and operated by funds, foundations, or corporations that meet all the requirements of subdivision (a) shall be deemed to be within the exemption provided for in subdivision (b) of Sections 4 and 5 of Article XIII of the California Constitution and this section to the extent the residential use of the property is institutionally necessary for the operation of the organization.

(j) For purposes of this section, charitable purposes include educational purposes. For purposes of this subdivision, "educational purposes" means those educational purposes and activities for the benefit of the community as a whole or an unascertainable and indefinite portion thereof, and shall not include those educational purposes and activities that are primarily for the benefit of an organization's shareholders. Educational activities include the study of relevant information, the dissemination of that information to interested members of the general public, and the participation of interested members of the general public.

SEC. 2. Section 254.5 of the Revenue and Taxation Code is amended to read:

254.5. (a) Affidavits for the welfare exemption and the veterans' organization exemption shall be filed in duplicate on or before February 15 of each year with the assessor. Affidavits of organizations filing for the first time shall be accompanied by duplicate certified copies of the financial statements of the owner and operator. Thereafter, financial statements shall be submitted only if requested in writing by either the assessor or the board. Copies of the affidavits and financial statements shall be forwarded not later than April 1 by the assessor with his or her recommendations for approval or denial to the board which shall review all the affidavits and statements and may institute an independent audit or verification of the operations of the owner and operator to ascertain whether both the owner and operator meet the requirements of Section 214 of the Revenue and Taxation Code. In this connection the board shall consider, among other matters, whether:

(1) The services and expenses of the owner or operator (including salaries) are excessive, based upon like services and salaries in comparable public institutions.

(2) The operations of the owner or operator, either directly or indirectly, materially enhance the private gain of any individual or individuals.

(3) Any capital investment of the owner or operator for expansion of physical plant is justified by the contemplated return thereon, and required to serve the interests of the community.

(4) The property on which exemption is claimed is used for the actual operation of an exempt activity and does not exceed an amount of property reasonably necessary to the accomplishment of the exempt purpose.

(b) The board shall make a finding as to the eligibility of each applicant and the applicant's property and shall forward its finding to the assessor concerned. In a case where the board conducts a hearing with respect to the eligibility of the applicant and the applicant's property, the finding shall be forwarded to the assessor concerned within 30 days after the decision is made by the board following the hearing. The assessor may deny the claim of an applicant the board finds eligible but may not grant the claim of an applicant the board finds ineligible.

(c) Notwithstanding subdivision (a), an applicant, granted a welfare exemption and owning any property exempted pursuant to Section 231, shall not be required to reapply for the welfare exemption in any subsequent year in which there has been no transfer of, or other change in title to, the exempted property and the property is used exclusively by a governmental entity for its interest and benefit. The applicant shall notify the assessor on or before March 15 if, on or before the preceding lien date, the applicant became ineligible for the welfare exemption or if, on or before that

lien date, the property was no longer owned by the applicant or otherwise failed to meet all requirements for the welfare exemption.

Prior to the lien date, the assessor shall annually mail a notice to every applicant relieved of the requirement of filing an annual application by this subdivision.

The notice shall be in a form and contain that information that the board may prescribe, and shall set forth the circumstances under which the property may no longer be eligible for exemption and advise the applicant of the duty to inform the assessor if the property is no longer eligible for exemption.

The notice shall include a card that is to be returned to the assessor by any applicant desiring to maintain eligibility for the welfare exemption under Section 231. The card shall be in the following form:

To all persons who have received a welfare exemption under Section 231 of the Revenue and Taxation Code for the _____ fiscal year.

Question: Will the property to which the exemption applies in the _____ fiscal year continue to be used exclusively by government for its interest and benefit in the _____ fiscal year?

YES _____ NO _____

Signature: _____

Title: _____

Failure to return this card does not of itself constitute a waiver of exemption as called for by the California Constitution, but may result in onsite inspection to verify exempt activity.

(d) Upon any indication that a welfare exemption has been incorrectly granted, the assessor shall redetermine eligibility for the exemption. If the assessor determines that the property, or any portion thereof, is no longer eligible for the exemption, he or she shall immediately cancel the exemption on so much of the property as is no longer eligible for the exemption.

(e) If a welfare exemption has been incorrectly allowed, an escape assessment as provided by Article 4 (commencing with Section 531) of Chapter 3 in the amount of the exemption, with interest as provided in Section 506, shall be made, and a penalty shall be assessed for any failure to notify the assessor as required by this section in an amount equaling 10 percent of the escape assessment, but in no event exceeding two hundred fifty dollars ($250).

SEC. 3. Section 275.5 of the Revenue and Taxation Code is amended to read:

275.5. If a person claiming classification of a vessel as a documented vessel eligible for assessment under Section 227 fails to file the affidavit required by Section 254 by 5 p.m. on February 15 of

the calendar year in which the fiscal year begins, but files that affidavit on or before the following August 1, the assessment shall be reduced in a sum equal to 80 percent of the reduction that would have been allowed had the affidavit been timely filed.

SEC. 4. Section 619 of the Revenue and Taxation Code is amended to read:

619. (a) Except as provided in subdivision (f), the assessor shall, upon or prior to completion of the local roll, do either of the following:

(1) Inform each assessee of real property on the local secured roll whose property's full value has increased over its full value for the prior year of the assessed value of that property as it shall appear on the completed local roll.

(2) Inform each assessee of real property on the local secured roll, or each assessee on the local secured roll and each assessee on the unsecured roll, of the assessed value of his or her real property or of both his or her real and his or her personal property as it shall appear on the completed local roll.

(b) The information given by the assessor to the assessee pursuant to paragraph (1) or (2) of subdivision (a) shall include a notification of hearings by the county board of equalization, which shall include the period during which assessment protests will be accepted and the place where they may be filed. The information shall also include an explanation of the stipulation procedure set forth in Section 1607 and the manner in which the assessee may request use of this procedure.

(c) In the case of an increase in a property's full value that is determined pursuant to paragraph (1) of subdivision (a) over the property's full value determined for the prior year in accordance with paragraph (2) of subdivision (a) of Section 51, the information shall also include the base year value of the property, compounded annually from the base year to the current year by the appropriate inflation factors.

(d) The information shall be furnished by the assessor to the assessee by regular United States mail directed to him or her at his or her latest address known to the assessor.

(e) Neither the failure of the assessee to receive the information nor the failure of the assessor to so inform the assessee shall in any way affect the validity of any assessment or the validity of any taxes levied pursuant thereto.

(f) This section shall not apply to annual increases in the valuation of property which reflect the inflation rate, not to exceed 2 percent, pursuant to the authority of subdivision (b) of Section 2 of Article XIII A of the California Constitution, for purposes of property tax limitation determinations.

(g) This section does not apply to increases in assessed value caused solely by changes in the assessment ratio provided for in Section 401.

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

SEC. 5. Section 1605.6 of the Revenue and Taxation Code is amended to read:

1605.6. After the filing of an application for reduction of an assessment, the clerk of the county board of equalization shall set the matter for hearing and notify the applicant, or his or her designated representative, of the time and date of the hearing. Notice of the time, date, and place of the hearing shall be given not less than 45 days prior to the hearing, unless the assessor and the applicant, or the applicant's designated representative, stipulate orally or in writing to a shorter notice period. If the hearing on a particular application is vacated for any reason, the clerk of the county board of equalization shall notify the applicant, or the applicant's designated representative, of the new time, date, and place of the hearing not less than 10 days prior to the new hearing date, unless the assessor and the applicant, or the applicant's designated representative, stipulate orally or in writing to a shorter notice period, or the application has been heard by a hearing officer in accordance with Article 1.7 (commencing with Section 1636). At the option of the clerk of the county board of equalization, the notice required by this section may be electronically transmitted, if requested in writing by the taxpayer, to an electronic address designated by the taxpayer. The clerk may also opt to electronically transmit the notice required by this section to the assessor, if requested by the assessor, to an electronic address designated by the assessor.

SEC. 6. Section 11471 of the Revenue and Taxation Code is repealed.

SEC. 7. Section 11471 is added to the Revenue and Taxation Code, to read:

11471. At any time within four years after any tax or any amount of tax required to be collected becomes due and payable and at any time within four years after the delinquency of any tax or any amount of tax required to be collected, or within the period during which a lien is in force as the result of the recording or filing of a notice of state tax lien under Section 7171 of the Government Code, the board may bring an action in the courts of this state, of any other state, or of the United States in the name of the people of the State of California to collect the amount delinquent together with penalties and interest.

SEC. 8. Section 11472 is added to the Revenue and Taxation Code, to read:

11472. The Attorney General shall prosecute the action, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proofs, trials, and appeals are applicable to the proceedings.

SEC. 9. Section 11472 of the Revenue and Taxation Code is amended and renumbered to read:

11473. In the action a writ of attachment may be issued in the manner provided by Chapter 5 (commencing with Section 485.010)

of Title 6.5 of Part 2 of the Code of Civil Procedure without the showing required by Section 485.010 of the Code of Civil Procedure.

SEC. 10. Section 11473 of the Revenue and Taxation Code is amended and renumbered to read:

11474. In the action a certificate by the board showing the delinquency shall be prima facie evidence of the levy of the tax, of the delinquency of the amount of tax, interest, and penalties set forth in the certificate, and of compliance by the board with all provisions of this part in relation to the assessment of the property and computation and levy of the tax.

SEC. 11. Section 11475 is added to the Revenue and Taxation Code, to read:

11475. In any action brought under this part, process may be served according to the Code of Civil Procedure and the Civil Code or may be served upon any agent or clerk in this state employed by any private railroad car company in a place of business maintained by the private railroad car company in this state. In the latter case, a copy of the process shall be sent by registered mail to the private railroad car company at its principal or home office.

CHAPTER 696

An act to add Chapter 6 (commencing with Section 295) to Title 9 of Part 1 of, and to repeal Section 290.2 of, the Penal Code, relating to criminal identification.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 290.2 of the Penal Code is repealed.

SEC. 2. Chapter 6 (commencing with Section 295) is added to Title 9 of Part 1 of the Penal Code, to read:

CHAPTER 6. DNA AND FORENSIC IDENTIFICATION DATA BASE AND DATA BANK ACT OF 1998

Article 1. Purpose and Administration

295. (a) This chapter shall be known and may be cited as the DNA and Forensic Identification Data Base and Data Bank Act of 1998.

(b) The Legislature finds and declares all of the following:

(1) Deoxyribonucleic acid (DNA) and forensic identification analysis is a useful law enforcement tool for identifying and prosecuting sexual and violent offenders.

(2) It is the intent of the Legislature, in order to further the purposes of this chapter, to require DNA and forensic identification data bank samples for the felony offenses described in subdivision (a) of Section 296.

(3) It is necessary to enact this act defining and governing the state's DNA and forensic identification data base and data bank in order to clarify existing law and to enable the state's DNA and forensic identification data base and data bank program to become a more effective law enforcement tool.

(c) The purpose of the DNA and forensic identification data bank is to assist federal, state, and local criminal justice and law enforcement agencies within and outside California in the expeditious detection and prosecution of individuals responsible for sex offenses and other violent crimes, the exclusion of suspects who are being investigated for these crimes, and the identification of missing and unidentified persons, particularly abducted children.

(d) The Department of Justice, through its DNA Laboratory, shall be responsible for the management and administration of the state's DNA data base and data bank identification program and for liaison with the Federal Bureau of Investigation (FBI) regarding the state's participation in a national DNA data base such as the FBI's Combined DNA Index System (CODIS) that allows the storage and exchange of DNA records submitted by state and local forensic DNA laboratories nationwide.

(e) The Department of Justice shall be responsible for implementing this chapter. The Department of Justice DNA Laboratory, the Department of Corrections, and the Department of the Youth Authority shall adopt policies and enact regulations for the implementation of this chapter, as necessary, to give effect to the intent and purpose of this chapter, and to ensure that data bank blood specimens, saliva samples, and thumb and palm print impressions are collected from qualifying offenders in a timely manner, as soon as possible after conviction, or a plea or finding of guilty, no contest, or not guilty by reason of insanity, or upon the disposition rendered in the case of a juvenile who is adjudged a ward of the court under Section 602 of the Welfare and Institutions Code for commission of any of this chapter's enumerated qualifying offenses, or when it is determined that a qualifying offender has not given the required samples. The Department of Corrections and the Department of the Youth Authority shall adopt the policies and regulations for implementing this chapter with advice from and in consultation with the Department of Justice DNA Laboratory Director.

The Department of Corrections and the Department of the Youth Authority shall submit copies of their policies and regulations with respect to this chapter to the Department of Justice DNA Laboratory Director, and periodically shall submit to the director written reports updating the director as to the status of their compliance with this chapter.

(f) (1) When the specimens, samples, and print impressions required by this chapter are collected at a county jail or other county detention facility, including a private community correctional facility, the county sheriff or chief administrative officer of the county jail or other detention facility shall be responsible for ensuring all of the following:

(A) The requisite specimens, samples, and print impressions are collected from qualifying offenders during the intake process at that facility, or reasonably promptly thereafter.

(B) The requisite specimens, samples, and print impressions are collected as soon as administratively practicable after a qualifying offender reports to the facility for the purpose of providing specimens, samples, and print impressions.

(C) The specimens, samples, and print impressions collected pursuant to this chapter are forwarded immediately to the Department of Justice, and in compliance with department policies.

(2) The specimens, samples, and print impressions required by this chapter shall be collected by a person using a collection kit approved by the Department of Justice and in accordance with the requirements and procedures set forth in subdivision (b) of Section 298.

(3) The counties shall be reimbursed for the costs of obtaining specimens, samples, and print impressions subject to the conditions and limitations set forth by the Department of Justice policies governing reimbursement for collecting specimens, samples, and print impressions pursuant to this chapter.

(g) Any funds appropriated by the Legislature to implement this chapter, including funds to reimburse counties, shall be deposited into the Department of Justice DNA Testing Fund as created by paragraph (2) of subdivision (b) of Section 290.3.

295.1. (a) The Department of Justice shall perform DNA analysis and other forensic identification analysis pursuant to this chapter only for identification purposes.

(b) The Department of Justice Bureau of Criminal Identification and Information shall perform examinations of palm prints pursuant to this chapter only for identification purposes.

(c) The DNA Laboratory of the Department of Justice shall serve as a repository for blood specimens and saliva and other biological samples collected, and shall analyze specimens and samples, and store, compile, correlate, compare, maintain, and use DNA and forensic identification profiles and records related to the following:

(1) Forensic casework.

(2) Known and evidentiary specimens and samples from crime scenes or criminal investigations.

(3) Missing or unidentified persons.

(4) Offenders required to provide specimens, samples, and print impressions under this chapter.

(5) Anonymous DNA records used for training, research, statistical analysis of populations, or quality control.

(d) The computerized data bank of the DNA Laboratory of the Department of Justice shall include files as necessary to implement this chapter.

(e) Nothing in this section shall be construed as requiring the Department of Justice to provide samples for quality control or other purposes to those who request samples.

Article 2. Offenders Subject to Sample Collection

296. (a) (1) Any person who is convicted of, or pleads guilty or no contest to, any of the following crimes, or is found not guilty by reason of insanity of any of the following crimes, shall, regardless of sentence imposed or disposition rendered, be required to provide two specimens of blood, a saliva sample, right thumbprints, and a full palm print impression of each hand for law enforcement identification analysis:

(A) Any offense or attempt to commit any felony offense described in Section 290, or any felony offense that imposes upon a person the duty to register in California as a sex offender under Section 290, except any offense involving lewd and lascivious conduct under Section 272 and any offense under subdivision (d) of Section 647.

(B) Murder in violation of Section 187, 190, or 190.05, or an attempt to commit murder.

(C) Voluntary manslaughter in violation of Section 192 or an attempt to commit voluntary manslaughter.

(D) Felony spousal abuse in violation of Section 273.5.

(E) Aggravated sexual assault of a child in violation of Section 269.

(F) A felony offense of assault or battery in violation of Section 217.1, 220, 241.1, 243, 243.1, 243.3, 243.4, 243.7, 244, 245, 245.2, 245.3, or 245.5.

(G) Kidnapping in violation of subdivisions (a) to (e), inclusive, of Section 207, or Section 208, 209, 209.5, or 210, or an attempt to commit any of these offenses.

(H) Mayhem in violation of Section 203 or aggravated mayhem in violation of Section 205, or an attempt to commit either of these offenses.

(I) Torture in violation of Section 206 or an attempt to commit torture.

(2) Any person who is required to register under Section 290 because of the commission of, or the attempt to commit, a felony offense specified in Section 290, or who is convicted of murder in violation of Section 190 or 190.05, or who is convicted of a felony offense of assault or battery in violation of Section 217.1, 220, 241.1, 243, 243.1, 243.3, 243.4, 243.7, 244, 245, 245.2, 245.3, or 245.5, and who is committed to the state prison, a county jail, or any institution under

the jurisdiction of the Department of the Youth Authority where he or she was confined, or is granted probation, or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall be required to provide two specimens of blood, a saliva sample, a right thumbprint, and a full palm print impression to that institution or, in the case of a person granted probation, to a person and at a location within the county designated for testing.

(b) The provisions of this chapter and its requirements for submission to testing as soon as administratively practicable to provide specimens, samples, and print impressions as described in subdivision (a) shall apply regardless of placement or confinement in any mental hospital or other public or private treatment facility, and shall include, but not be limited to, the following persons, including juveniles:

(1) Any person committed to a state hospital or other treatment facility as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(2) Any person who has a severe mental disorder as set forth within the provisions of Article 4 (commencing with Section 2960) of Chapter 4 of Title 1 of Part 3 of the Penal Code.

(3) Any person found to be a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(c) The provisions of this chapter are mandatory and apply whether or not the court advises a person, including any juvenile, that he or she must provide the data bank and data base specimens, samples, and print impressions as a condition of probation, parole, or any plea of guilty, no contest, or not guilty by reason of insanity, to any of the offenses described in subdivision (a).

296.1. (a) Any person, including any juvenile, who comes within the provisions of this chapter for an offense set forth in subdivision (a) of Section 296, and who is granted probation, or serves his or her entire term of confinement in a county jail, or is not sentenced to a term of confinement in a state prison facility, or otherwise bypasses a prison inmate reception center maintained by the Department of Corrections, shall, as soon as administratively practicable, but in any case, prior to physical release from custody, be required to provide two specimens of blood, a saliva sample, and thumb and palm print impressions as set forth in subdivision (a) of Section 296, at a county jail facility or other state, local, or private facility designated for the collection of these specimens, samples, and print impressions, in accordance with subdivision (f) of Section 295.

If the person subject to this chapter is not incarcerated at the time of sentencing, the court shall order the person to report within five calendar days to a county jail facility or other state, local, or private

facility designated for the collection of specimens, samples, and print impressions to provide these specimens, samples, and print impressions in accordance with subdivision (f) of Section 295.

(b) If a person who comes within the provisions of this chapter for an offense set forth in subdivision (a) of Section 296 is sentenced to serve a term of imprisonment in a state correctional institution, the Director of Corrections shall collect the blood specimens, saliva samples, and thumb and palm print impressions required by this chapter from the person during the intake process at the reception center designated by the director, or as soon as administratively practicable thereafter at a receiving penal institution.

(c) Any person, including, but not limited to, any juvenile and any person convicted and sentenced to death, life without the possibility of parole, or any life or indeterminate term, who is imprisoned or confined in a state correctional institution, a county jail, a facility within the jurisdiction of the Department of the Youth Authority, or any other state, local, or private facility after a conviction of any crime, or disposition rendered in the case of a juvenile, whether or not that crime or offense is one set forth in subdivision (a) of Section 296, shall provide two specimens of blood, a saliva sample, and thumb and palm print impressions pursuant to this chapter, as soon as administratively practicable once it has been determined that both of the following apply:

(1) The person has been convicted in California of a qualifying offense described in subdivision (a) of Section 296 or of a similar crime under the laws of the United States or any other state that would constitute an offense described in subdivision (a) of Section 296.

(2) The person's blood specimens, saliva samples, and thumb and palm print impressions authorized by this chapter are not in the possession of the Department of Justice DNA Laboratory as part of the DNA data bank program.

This subdivision applies regardless of when the person was convicted of the qualifying offense described in subdivision (a) of Section 296 or a similar crime under the laws of the United States or any other state, or when disposition was rendered in the case of a juvenile who is adjudged a ward of the court for commission of a qualifying offense described in subdivision (a) of Section 296 or a similar crime under the laws of the United States or any other state.

(d) Any person, including any juvenile, who comes within the provisions of this chapter for an offense set forth in subdivision (a) of Section 296, and who is on probation or parole, shall be required to provide two specimens of blood, a saliva sample, and thumb and palm print impressions as required pursuant to this chapter, if it is determined that the person has not previously provided these specimens, samples, and print impressions to law enforcement, or if it is determined that these specimens, samples, and print impressions are not in the possession of the Department of Justice. The person

shall have the specimens, samples, and print impressions collected within five calendar days of being notified by a law enforcement agency or other agency authorized by the Department of Justice. The specimens, samples, and print impressions shall be collected in accordance with subdivision (f) of Section 295 at a county jail facility or other state, local, or private facility designated for this collection.

This subdivision shall apply regardless of when the crime committed became a qualifying offense pursuant to this chapter.

(e) When an offender from another state is accepted into this state under any of the interstate compacts described in Article 3 (commencing with Section 11175) or Article 4 (commencing with Section 1189) of Chapter 2 of Title 1 of Part 4 of this code, or Chapter 4 (commencing with Section 1300) of Part 1 of Division 2 of the Welfare and Institutions Code, or under any other reciprocal agreement with any county, state, or federal agency, or any other provision of law, whether or not the offender is confined or released, the acceptance is conditional on the offender providing blood specimens, saliva samples, and palm and thumb print impressions pursuant to this chapter, if the offender was convicted of an offense which would qualify as a crime described in subdivision (a) of Section 296, or if the person was convicted of a similar crime under the laws of the United States or any other state.

If the person is not confined, the specimens, samples, and print impressions required by this chapter must be provided within five calendar days after the offender reports to the supervising agent or within five calendar days of notice to the offender, whichever occurs first. The person shall report to a county jail facility in the county where he or she resides or temporarily is located to have the specimens, samples, and print impressions collected pursuant to this chapter. The specimens, samples, and print impressions shall be collected in accordance with subdivision (f) of Section 295.

If the person is confined, he or she shall provide the blood specimens, saliva samples, and thumb and palm print impressions required by this chapter as soon as practicable after his or her receipt in a state, county, local, private, or other facility.

(f) Subject to the approval of the Director of the Federal Bureau of Investigation, persons confined or incarcerated in a federal prison or federal institution located in California who are convicted of a qualifying offense described in subdivision (a) of Section 296 or of a similar crime under the laws of the United States or any other state that would constitute an offense described in subdivision (a) of Section 296, are subject to this chapter and shall provide blood specimens, saliva samples, and thumb and palm print impressions pursuant to this chapter if any of the following apply:

(1) The person committed a qualifying offense in California.

(2) The person was a resident of California at the time of the qualifying offense.

(3) The person has any record of a California conviction for a sex or violent offense described in subdivision (a) of Section 296, regardless of when the crime was committed.

(4) The person will be released in California.

Once a federal data bank is established and accessible to the Department of Justice, the Department of Justice DNA Laboratory shall, upon the request of the United States Department of Justice, forward the samples taken pursuant to this chapter to the United States Department of Justice DNA data bank laboratory. The samples and impressions required by this chapter shall be taken in accordance with the procedures set forth in subdivision (f) of Section 295.

(g) If a person who is released on parole, furlough, or other release, is returned to a state correctional institution for a violation of a condition of his or her parole, furlough, or other release, and is serving or at any time has served a term of imprisonment for committing an offense described in subdivision (a) of Section 296, and he or she did not provide specimens, samples, and print impressions pursuant to the state's DNA data bank program, the person shall submit to collection of blood specimens, saliva samples, and thumb and palm print impressions at a state correctional institution.

This subdivision applies regardless of the crime or Penal Code violation for which a person is returned to a state correctional institution and regardless of the date the qualifying offense was committed.

296.2. (a) Whenever the DNA Laboratory of the Department of Justice notifies the Department of Corrections or any law enforcement agency that a biological specimen or sample, or print impression is not usable for any reason, the person who provided the original specimen, sample, or print impression shall submit to collection of additional specimens, samples, or print impressions. The Department of Corrections or other responsible law enforcement agency shall collect additional specimens, samples, and print impressions from these persons as necessary to fulfill the requirements of this chapter, and transmit these specimens, samples, and print impressions to the appropriate agencies of the Department of Justice.

(b) If a person, including any juvenile, is convicted of, pleads guilty or no contest to, is found not guilty by reason of insanity of, or is adjudged a ward of the court under Section 602 of the Welfare and Institutions Code for committing, any of the offenses described in subdivision (a) of Section 296, and has given a blood specimen or other biological sample or samples to law enforcement for any purpose, the DNA Laboratory of the Department of Justice is authorized to analyze the blood specimen and other biological sample or samples for forensic identification markers, including DNA markers, and to include the DNA and forensic identification profiles

from these specimens and samples in the state's DNA and forensic identification data bank and data bases.

This subdivision applies whether or not the blood specimen or other biological sample originally was collected from the sexual or violent offender pursuant to the data bank and data base program, and whether or not the crime committed predated the enactment of the state's DNA and forensic identification data bank program, or any amendments thereto. This subdivision does not relieve a person convicted of a crime described in subdivision (a) of Section 296, or otherwise subject to this chapter, from the requirement to give blood specimens, saliva samples, and thumb and palm print impressions for the DNA and forensic identification data bank and data base program as described in this chapter.

(c) Any person who is required to register under Section 290 for the commission of any felony offense specified in Section 290 who has not provided the specimens, samples, and print impressions described in this chapter for any reason including the release of the person prior to the enactment of the state's DNA and forensic identification data base and data bank program, an oversight or error, or because of the transfer of the person from another state, the person, as an additional requirement of registration or of updating his or her annual registration under paragraph (1) of subdivision (a) of Section 290 and subdivisions (e) and (f) of Section 290 shall give specimens, samples, and print impressions as described in this chapter for inclusion in the state's DNA and forensic identification data base and data bank.

At the time the person registers or updates his or her registration, he or she shall receive an appointment designating a time and place for the collection of the specimens, samples, and print impressions described in this chapter, if he or she has not already complied with the provisions of this chapter.

As specified in the appointment, the person shall report to a county jail facility in the county where he or she resides or is temporarily located to have specimens, samples, and print impressions collected pursuant to this chapter or other facility approved by the Department of Justice for this collection. The specimens, samples, and print impressions shall be collected in accordance with subdivision (f) of Section 295.

If, prior to the time of the annual registration update, a person is notified by the Department of Justice, a probation or parole officer, other law enforcement officer, or officer of the court, that he or she is subject to this chapter, then the person shall provide the specimens, samples, and print impressions required by this chapter within 10 calendar days of the notification at a county jail facility or other facility approved by the department for this collection.

Article 3. Data Base Applications

297. (a) The laboratories of the Department of Justice that are accredited by the American Society of Crime Laboratory Directors Laboratory Accreditation Board (ASCLD/LAB), and any crime laboratory designated by the Department of Justice that is accredited by the ASCLD/LAB, are authorized to analyze crime scene samples and other samples of known and unknown origin and to compare and check the forensic identification profiles, including DNA profiles, of these samples against available DNA and forensic identification data banks and data bases in order to establish identity and origin of samples for identification purposes.

(b) A biological sample obtained from a suspect in a criminal investigation for the commission of any crime may be analyzed for forensic identification profiles, including DNA profiles, by the DNA Laboratory of the Department of Justice, which is accredited by the ASCLD/LAB, or any crime laboratory designated by the Department of Justice that is accredited by the ASCLD/LAB. Samples obtained from a suspect shall only be compared to samples taken from the criminal investigation for which he or she is a suspect and for which the sample was originally taken either by court order or voluntarily.

(c) All laboratories, including the Department of Justice DNA laboratories, contributing DNA profiles for inclusion in California's DNA Data Bank shall be accredited by the ASCLD/LAB. Additionally, each laboratory shall submit to the Department of Justice for review the annual report required by the ASCLD/LAB which documents the laboratory's adherence to ASCLD/LAB standards. The requirements of this subdivision apply to California laboratories only and do not preclude DNA profiles developed in California from being searched in the National DNA Data Base (CODIS).

(d) Nothing in this section precludes laboratories meeting Technical Working Group on DNA Analysis Methods (TWGDAM) guidelines or standards promulgated by the DNA Advisory Board as established pursuant to Section 14131 of Title 42 of the United States Code, from performing forensic identification analyses, including DNA profiling, independent of the Department of Justice DNA and forensic identification data base and data bank program.

(e) The limitation on the types of offenses set forth in subdivision (a) of Section 296 as subject to the collection and testing procedures of this chapter is for the purpose of facilitating the administration of this chapter. The detention, arrest, wardship, or conviction of a person based upon a data bank match or data base information is not invalidated if it is later determined that the specimens, samples, or print impressions were obtained or placed in a data bank or data base by mistake.

Article 4. Collection and Forwarding of Samples

298. (a) The Director of Corrections, or the Chief Administrative Officer of the detention facility, jail, or other facility at which the blood specimens, saliva samples, and thumb and palm print impressions were collected shall cause these specimens, samples, and print impressions to be forwarded promptly to the Department of Justice. The specimens, samples, and print impressions shall be collected by a person using a Department of Justice approved collection kit and in accordance with the requirements and procedures set forth in subdivision (b).

(b) (1) The Department of Justice shall provide all blood specimen vials, mailing tubes, labels, and instructions for the collection of the blood specimens, saliva samples, and thumbprints. The specimens, samples, and thumbprints shall thereafter be forwarded to the DNA Laboratory of the Department of Justice for analysis of DNA and other forensic identification markers.

Additionally, the Department of Justice shall provide all full palm print cards, mailing envelopes, and instructions for the collection of full palm prints. The full palm prints, on a form prescribed by the Department of Justice, shall thereafter be forwarded to the Department of Justice for maintenance in a file for identification purposes.

(2) The withdrawal of blood shall be performed in a medically approved manner. Only health care providers trained and certified to draw blood may withdraw the blood specimens for purposes of this section.

(3) Right thumbprints and a full palm print impression of each hand shall be taken on forms prescribed by the Department of Justice. The palm print forms shall be forwarded to and maintained by the Bureau of Criminal Identification and Information of the Department of Justice. Right thumbprints also shall be taken at the time of the withdrawal of blood and shall be placed on the forms and the blood vial label. The blood vial and thumbprint forms shall be forwarded to and maintained by the DNA Laboratory of the Department of Justice.

(4) The DNA laboratory of the Department of Justice is responsible for establishing procedures for entering data bank and data base information.

(c) (1) Persons authorized to draw blood under this chapter for the data bank or data base shall not be civilly or criminally liable either for withdrawing blood when done in accordance with medically accepted procedures, or for obtaining saliva samples or thumb or palm print impressions when performed in accordance with standard professional practices.

(2) There is no civil or criminal cause of action against any law enforcement agency or the Department of Justice, or any employee thereof, for a mistake in placing an entry in a data bank or a data base.

298.1. As of the effective date of this chapter, any person who refuses to give any or all of the following, blood specimens, saliva samples, or thumb or palm print impressions as required by this chapter, once he or she has received written notice from the Department of Justice, the Department of Corrections, any law enforcement personnel, or officer of the court that he or she is required to provide specimens, samples, and print impressions pursuant to this chapter is guilty of a misdemeanor. The refusal or failure to give any or all of the following, a blood specimen, saliva sample, or thumb or palm print impression is punishable as a separate offense by both a fine of five hundred dollars ($500) and imprisonment of up to one year in a county jail, or if the person is already imprisoned in the state prison, by sanctions for misdemeanors according to a schedule determined by the Department of Corrections.

Article 5. Expungement of Information

299. (a) A person whose DNA profile has been included in the data bank pursuant to this chapter shall have his or her information and materials expunged from the data bank when the underlying conviction or disposition serving as the basis for including the DNA profile has been reversed and the case dismissed, the defendant has been found factually innocent of the underlying offense pursuant to Section 851.8, the defendant has been found not guilty, or the defendant has been acquitted of the underlying offense. The court issuing the reversal, dismissal, or acquittal shall order the expungement and shall send a copy of that order to the Department of Justice DNA Laboratory Director. Upon receipt of the court order, the Department of Justice shall expunge all identifiable information in the data bank and any criminal identification records pertaining to the person.

(b) (1) A person whose DNA profile has been included in a data bank pursuant to this chapter may make a written request to expunge information and materials from the data bank. The person requesting the data bank entry to be expunged must send a copy of his or her request to the trial court that entered the conviction or rendered disposition in the case, to the DNA Laboratory of the Department of Justice, and to the prosecuting attorney of the county in which he or she was convicted, with proof of service on all parties. The court has the discretion to grant or deny the request for expungement. The denial of a request for expungement is a nonappealable order and shall not be reviewed by petition for writ.

(2) Except as provided below, the Department of Justice shall expunge all identifiable information in the data bank and any criminal identification records pertaining to the person upon receipt of a court order that verifies the applicant has made the necessary showing at a noticed hearing, and that includes all of the following:

(A) The written request for expungement pursuant to this section.

(B) A certified copy of the court order reversing and dismissing the conviction, or a letter from the district attorney certifying that the defendant has been found factually innocent, the defendant has been found not guilty, the defendant has been acquitted of the underlying offense, or the underlying conviction has been reversed and the case dismissed.

(C) Proof of written notice to the prosecuting attorney and the Department of Justice that expungement has been requested.

(D) A court order verifying that no retrial or appeal of the case is pending, that it has been at least 180 days since the defendant notified the prosecuting attorney and the Department of Justice of the expungement request, and that the court has not received an objection from the Department of Justice or the prosecuting attorney.

(c) Upon order of the court, the Department of Justice shall destroy any specimen or sample collected from the person and any criminal identification records pertaining to the person, unless the department determines that the person has otherwise become obligated to submit a blood specimen as a result of a separate conviction, juvenile adjudication, or finding of guilty or not guilty by reason of insanity for an offense described in subdivision (a) of Section 296, or as a condition of a plea.

The Department of Justice is not required to destroy an autoradiograph or other item obtained from a blood specimen if evidence relating to another person subject to the provisions of this chapter would thereby be destroyed.

Any identification, warrant, probable cause to arrest, or arrest based upon a data bank match is not invalidated due to a failure to expunge or a delay in expunging records.

(d) The DNA laboratory of the Department of Justice shall review its data bank to determine whether it contains DNA profiles from persons who are no longer suspects in a criminal case. Evidence accumulated pursuant to this chapter from any crime scene with respect to a particular person shall be stricken from the data bank when it is determined that the person is no longer a suspect in the case.

Article 6. Limitations on Disclosure

299.5. (a) All DNA and forensic identification profiles retained by the Department of Justice pursuant to this chapter are exempt from any law requiring disclosure of information to the public and shall be confidential except as otherwise provided in this chapter.

(b) Non-DNA forensic identification information may be filed with the offender's file maintained by the Sex Registration Unit of the

Department of Justice or in other computerized data bank systems maintained by the Department of Justice.

(c) The DNA and other forensic identification information retained by the Department of Justice pursuant to this chapter shall not be included in the state summary criminal history information. However, nothing in this chapter precludes law enforcement personnel from entering into a person's criminal history information or offender file maintained by the Department of Justice the fact that the specimens, samples, and print impressions required by this chapter have or have not been collected from that person.

(d) The fact that the blood specimens, saliva samples, and print impressions required by this chapter have been received by the DNA Laboratory of the Department of Justice shall be included in the state summary criminal history information.

The full palm prints of each hand shall be filed and maintained by the Automated Latent Print Section of the Bureau of Criminal Identification and Information of the Department of Justice, and may be included in the state summary criminal history information.

(e) DNA and other forensic identification information shall be released only to law enforcement agencies, including, but not limited to, parole officers of the Department of Corrections, hearing officers of the parole authority, and district attorneys' offices, at the request of the agency, except as specified in this section. Dissemination of this information to law enforcement agencies and district attorneys' offices outside this state shall be performed in conformity with the provisions of this section. This information shall be available to defense counsel upon court order.

(f) Any person who knowingly discloses DNA or other forensic identification information developed pursuant to this section to an unauthorized individual or agency, or for other than identification purposes or purposes of parole or probation supervision, is guilty of a misdemeanor.

(g) Furnishing DNA or other forensic identification information of the defendant to his or her defense counsel for criminal defense purposes in compliance with discovery is not a violation of this section.

(h) It is not a violation of this section to disseminate statistical or research information obtained from the offender's file, the computerized data bank system, any of the DNA laboratory's data bases, or the full palm print file, provided that the subject of the file is not identified and cannot be identified from the information disclosed. It is not a violation of this section to include information obtained from a file in a transcript or record of a judicial proceeding, or in any other public record when the inclusion of the information in the public record is authorized by a court, statute, or decisional law. All requests for statistical or research information obtained from the DNA data bank shall be cataloged by the Department of Justice. Commencing January 1, 2000, the department shall submit an annual

letter to the Legislature including, with respect to each request, the requester's name or agency, the purpose of the request, whether the request is related to a criminal investigation or court proceeding, whether the request was granted or denied, any reasons for denial, costs incurred or estimates of the cost of the request, and the date of the request.

(i) The Department of Justice shall make public the methodology and procedures to be used in its DNA program prior to the commencement of DNA testing in its laboratories. The Department of Justice shall review and consider on an ongoing basis the findings and results of any peer review and validation studies submitted to the department by members of the relevant scientific community experienced in the use of DNA technology. This material shall be available to defense counsel upon court order.

(j) In order to maintain the computer system security of the Department of Justice DNA and forensic identification data base and data bank program, the computer software and data base structures used by the DNA Laboratory of the Department of Justice to implement this chapter are confidential.

(k) Nothing in this section shall preclude a court from ordering appropriate discovery.

299.6. (a) Nothing in this chapter shall prohibit the sharing or disseminating of population data base or data bank information with any of the following:

(1) Federal, state, or local law enforcement agencies.

(2) Crime laboratories, whether public or private, that serve federal, state, and local law enforcement agencies that have been approved by the Department of Justice.

(3) The attorney general's office of any state.

(4) Any third party that the Department of Justice deems necessary to assist the department's crime laboratory with statistical analyses of the population data base or to assist in the recovery or identification of human remains for humanitarian purposes, including identification of missing persons.

(b) Nothing in this chapter shall prohibit the sharing or disseminating of protocol and forensic DNA analysis methods and quality control procedures with any of the following:

(1) Federal, state, or local law enforcement agencies.

(2) Crime laboratories, whether public or private, that serve federal, state, and local law enforcement agencies that have been approved by the Department of Justice.

(3) The attorney general's office of any state.

(4) Any third party that the Department of Justice deems necessary to assist the department's crime laboratory with analyses of forensic protocol, research methods, or quality control procedures.

(c) The population data base and data bank of the DNA laboratory of the Department of Justice may be made available to and searched

by the FBI and any other agency participating in the FBI's CODIS System.

(d) The Department of Justice may provide portions of the blood specimens and saliva samples collected pursuant to this chapter to local public DNA laboratories for identification purposes provided that the privacy provisions of this section are followed by the local laboratory and if each of the following conditions is met:

(1) The procedures used by the local public DNA laboratory for the handling of specimens and samples and the disclosure of results are the same as those established by the Department of Justice pursuant to Sections 297, 298, and 299.5.

(2) The methodologies and procedures used by the local public DNA laboratory for DNA or forensic identification analysis are compatible with those established by the Department of Justice pursuant to subdivision (i) of Section 299.5, or otherwise are determined by the Department of Justice to be valid and appropriate for identification purposes.

(3) Only tests of value to law enforcement for identification purposes are performed and a copy of the results of the analysis are sent to the Department of Justice.

(4) All provisions of this section concerning privacy and security are followed.

(5) The local public DNA laboratory assumes all costs of securing the specimens and samples and provides appropriate tubes, labels, and instructions necessary to secure the samples.

(e) Any local public DNA laboratory that collects DNA typing information shall comply with and be subject to all of the rules, regulations, and restrictions of this chapter and shall follow the policies of the DNA Laboratory of the Department of Justice.

299.7. The Department of Justice is authorized to dispose of unused specimens and samples, unused portions of specimens and samples, and expired specimens and samples in the normal course of business and in a reasonable manner as long as the disposal method is designed to protect the identity and origin of specimens and samples from disclosure to third persons who are not a part of law enforcement.

Article 7. Construction and Severability

300. Nothing in this chapter shall limit or abrogate any existing authority of law enforcement officers to take, maintain, store, and utilize DNA or forensic identification markers, blood specimens, saliva samples, or thumb or palm print impressions for identification purposes.

300.1. Nothing in this chapter shall be construed to restrict the authority of the Department of Justice with respect to data banks and data bases created by other statutory authority, including, but not limited to, data bases related to fingerprints, firearms and other

weapons, child abuse, domestic violence deaths, child deaths, driving offenses, missing persons, violent crime information as described in Title 12 (commencing with Section 14200) of Part 4, and criminal justice statistics permitted by Section 13305.

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

300.3. The duties and requirements of the Department of Corrections and the Department of the Youth Authority pursuant to this chapter shall commence on July 1, 1999.

SEC. 3. It is the intent of the Legislature that the Department of Justice shall identify five hundred thousand dollars ($500,000) from existing resources to fund the costs of implementing this act during the first six months of its operation.

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 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 697

An act to amend, repeal, and add Sections 13960, 13964, and 13965 of, and to add and repeal Section 13961.01 of, the Government Code, relating to victims of crime, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 13960 of the Government Code is amended to read:

13960. As used in this article:

(a) (1) "Victim" means a resident of the State of California, a member of the military stationed in California, or a family member living with a member of the military stationed in California who sustains injury or death as a direct result of a crime.

(2) "Derivative victim" means a resident of California who is one of the following:

(A) At the time of the crime was the parent, sibling, spouse, or child of the victim.

(B) At the time of the crime was living in the household of the victim.

(C) A person who had previously lived in the household of the victim for a period of not less than two years in a relationship substantially similar to a relationship listed in subparagraph (A).

(D) Is another family member of the victim, including the victim's fiance, and witnessed the crime.

(E) Is the primary caretaker of a minor victim, but was not the primary caretaker at the time of the crime.

(b) "Injury" includes physical or emotional injury, or both. However, this article does not apply to emotional injury unless that injury is incurred by a victim who also sustains physical injury or threat of physical injury. For purposes of this article, a victim of a crime committed in violation of Section 261, 262, 271, 273a, 273d, 285, 286, 288, 288a, 288.5, or 289, or subdivision (b) or (c) of Section 311.4, of the Penal Code, who sustains emotional injury is presumed to have sustained physical injury. For purposes of this article, a victim of a crime committed in violation of Section 270 of the Penal Code, as a result of conduct other than a failure to pay child support, who sustains emotional injury is presumed to have sustained physical injury if criminal charges were filed or a prosecuting attorney expresses the opinion that the child is a victim of that section.

(c) "Crime" means a crime or public offense that would constitute a misdemeanor or a felony if committed in California by a competent adult which results in injury to a resident of this state, including a crime or public offense, wherever it may take place, when the resident is temporarily absent from the state. "Crime" includes an act of terrorism, as defined in Section 2331 of Title 18 of the United States Code, committed against a resident of the state, whether or not the act occurs within the state. No act involving the operation of a motor vehicle, aircraft, or water vehicle which results in injury or death constitutes a crime for the purposes of this article, except that a crime shall include any of the following:

(1) Injury or death intentionally inflicted through the use of a motor vehicle, aircraft, or water vehicle.

(2) Injury or death caused by a driver in violation of Section 20001 of the Vehicle Code.

(3) Injury or death caused by a person who is under the influence of any alcoholic beverage or drug.

(4) Injury or death caused by a driver of a motor vehicle in the immediate act of fleeing the scene of a crime in which he or she knowingly and willingly participated.

For the purpose of the limitations imposed by this article, a crime shall mean one act or series of related acts arising from the same course of conduct with the same perpetrator or perpetrators against a victim.

(d) "Pecuniary loss" means the following expenses for which the victim or derivative victim has not been and will not be reimbursed from any other source:

(1) The amount of medical or medical-related expenses incurred by the victim, including inpatient psychological or psychiatric expenses, and including, but not limited to, eyeglasses, hearing aids, dentures, or any prosthetic device taken, lost, or destroyed during the commission of the crime, or the use of which became necessary as a direct result of the crime.

(2) The amount of outpatient psychiatric, psychological, or other mental health counseling related expenses which became necessary as a direct result of the crime. These counseling services may only be reimbursed if provided by any of the following individuals:

(A) A person licensed as a physician who is certified in psychiatry by the American Board of Psychiatry and Neurology or who has completed a residency in psychiatry.

(B) A person licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(C) A person licensed as a clinical social worker under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code.

(D) A person licensed as a marriage, family, and child counselor under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(E) A person registered as a psychological assistant who is under the supervision of a licensed psychologist or board certified psychiatrist as required by Section 2913 of the Business and Professions Code.

(F) A person registered with the Board of Psychology who is providing services in a nonprofit community agency pursuant to subdivision (d) of Section 2909 of the Business and Professions Code.

(G) A person registered as a marriage, family, and child counselor intern who is under the supervision of a licensed marriage, family, and child counselor, a licensed clinical social worker, a licensed psychologist, or a licensed physician certified in psychiatry, as specified in Section 4980.44 of the Business and Professions Code.

(H) A person registered as an associate clinical social worker, as defined in Section 4996.18 of the Business and Professions Code, who is under the supervision of a licensed clinical social worker, a licensed psychologist, or a board certified psychiatrist.

(3) The loss of income that the victim or the loss of support that the derivative victim has incurred or will incur as a direct result of an injury or death.

(4) Pecuniary loss also includes nonmedical remedial care and treatment rendered in accordance with a religious method of healing recognized by state law.

(5) The amount of family psychiatric, psychological, or mental health counseling expenses necessary as a direct result of the crime for the successful treatment of the victim, provided to family members of the victim in the presence of the victim, whether or not the family member relationship existed at the time of the crime.

(e) "Board" means the State Board of Control.

(f) "Victim centers" means those centers as specified in Section 13835.2 of the Penal Code.

(g) "Peer counselor" means a provider of mental health counseling services who has completed a specialized course in rape crisis counseling skills development, participates in continuing education in rape crisis counseling skills development, and provides rape crisis counseling in consultation with a mental health practitioner licensed within the State of California.

(h) 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 13960 of the Government Code is amended to read:

13960. As used in this article:

(a) (1) "Victim" means a resident of the State of California, a member of the military stationed in California, or a family member living with a member of the military stationed in California who sustains injury or death as a direct result of a crime.

(2) "Derivative victim" means a resident of California, or resident of another state, who is one of the following:

(A) At the time of the crime was the parent, sibling, spouse, or child of the victim.

(B) At the time of the crime was living in the household of the victim.

(C) A person who had previously lived in the household of the victim for a period of not less than two years in a relationship substantially similar to a relationship listed in subparagraph (A).

(D) Is another family member of the victim, including the victim's fiancé or fiancée, and witnessed the crime.

(E) Is the primary caretaker of a minor victim, but was not the primary caretaker at the time of the crime.

(b) "Injury" includes physical or emotional injury, or both. However, this article does not apply to emotional injury unless that injury is incurred by a victim who also sustains physical injury or threat of physical injury. For purposes of this article, a victim of a crime committed in violation of Section 261, 262, 271, 273a, 273d, 285, 286, 288, 288a, 288.5, or 289, or subdivision (b) or (c) of Section 311.4, of the Penal Code, who sustains emotional injury is presumed to have sustained physical injury. For purposes of this article, a victim of a crime committed in violation of Section 270 of the Penal Code, as a result of conduct other than a failure to pay child support, who sustains emotional injury is presumed to have sustained physical injury if criminal charges were filed. For purposes of this article, a victim of a crime committed in violation of subdivision (d) of Section 261.5 of the Penal Code, who sustains emotional injury, is presumed to have sustained physical injury if felony charges were filed.

(c) "Crime" means a crime or public offense that would constitute a misdemeanor or a felony if committed in California by a competent adult which results in injury to a resident of this state, including a crime or public offense, wherever it may take place, when the resident is temporarily absent from the state. "Crime" includes an act of terrorism, as defined in Section 2331 of Title 18 of the United States Code, committed against a resident of the state, whether or not the act occurs within the state. No act involving the operation of a motor vehicle, aircraft, or water vehicle that results in injury or death constitutes a crime for the purposes of this article, except that a crime shall include any of the following:

(1) Injury or death intentionally inflicted through the use of a motor vehicle, aircraft, or water vehicle.

(2) Injury or death caused by a driver in violation of Section 20001 of the Vehicle Code.

(3) Injury or death caused by a person who is under the influence of any alcoholic beverage or drug.

(4) Injury or death caused by a driver of a motor vehicle in the immediate act of fleeing the scene of a crime in which he or she knowingly and willingly participated.

(5) Injury or death caused by a person in violation of subdivision (c) of Section 192 or Section 192.5 of the Penal Code.

For the purpose of the limitations imposed by this article, a crime shall mean one act or series of related acts arising from the same course of conduct with the same perpetrator or perpetrators against a victim.

(d) "Pecuniary loss" means the following expenses for which the victim or derivative victim has not been and will not be reimbursed from any other source:

(1) The amount of medical or medical-related expenses incurred by the victim, including inpatient psychological or psychiatric expenses, and including, but not limited to, eyeglasses, hearing aids, dentures, or any prosthetic device taken, lost, or destroyed during the

commission of the crime, or the use of which became necessary as a direct result of the crime.

(2) The amount of outpatient psychiatric, psychological, or other mental health counseling related expenses that became necessary as a direct result of the crime. These counseling services may only be reimbursed if provided by any of the following individuals:

(A) A person licensed as a physician who is certified in psychiatry by the American Board of Psychiatry and Neurology or who has completed a residency in psychiatry.

(B) A person licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(C) A person licensed as a clinical social worker under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code.

(D) A person licensed as a marriage, family, and child counselor under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(E) A person registered as a psychological assistant who is under the supervision of a licensed psychologist or board certified psychiatrist as required by Section 2913 of the Business and Professions Code.

(F) A person registered with the Board of Psychology who is providing services in a nonprofit community agency pursuant to subdivision (d) of Section 2909 of the Business and Professions Code.

(G) A person registered as a marriage, family, and child counselor intern who is under the supervision of a licensed marriage, family, and child counselor, a licensed clinical social worker, a licensed psychologist, or a licensed physician certified in psychiatry, as specified in Section 4980.44 of the Business and Professions Code.

(H) A person registered as an associate clinical social worker, as defined in Section 4996.18 of the Business and Professions Code, who is under the supervision of a licensed clinical social worker, a licensed psychologist, or a board certified psychiatrist.

(I) A person who qualifies as a psychology intern as described in Section 2911 of the Business and Professions Code who is under the supervision of a licensed mental health professional (psychiatrist, psychologist, or social worker) in a university hospital or university medical school clinic or a person who has completed the qualifications described in Section 2911 of the Business and Professions Code who is pursuing a postdoctoral and training in a university or university medical school clinic under the supervision of a licensed mental health professional (psychiatrist, psychologist, or social worker) for the purpose of achieving higher clinical competency.

(3) The loss of income that the victim or the loss of support that the derivative victim has incurred or will incur as a direct result of an injury or death.

(4) Pecuniary loss also includes nonmedical remedial care and treatment rendered in accordance with a religious method of healing recognized by state law.

(5) The amount of family psychiatric, psychological, or mental health counseling expenses necessary as a direct result of the crime for the successful treatment of the victim, provided to family members of the victim in the presence of the victim, whether or not the family member relationship existed at the time of the crime.

(e) "Board" means the State Board of Control.

(f) "Victim centers" means those centers as specified in Section 13835.2 of the Penal Code.

(g) "Peer counselor" means a provider of mental health counseling services who has completed a specialized course in rape crisis counseling skills development, participates in continuing education in rape crisis counseling skills development, and provides rape crisis counseling in consultation with a mental health practitioner licensed within the State of California.

(h) 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. 2.3. Section 13960 of the Government Code is amended to read:

13960. As used in this article:

(a) (1) "Victim" means a resident of the State of California, a member of the military stationed in California, or a family member living with a member of the military stationed in California who sustains injury or death as a direct result of a crime.

(2) "Derivative victim" means a resident of California who is one of the following:

(A) At the time of the crime was the parent, sibling, spouse, or child of the victim.

(B) At the time of the crime was living in the household of the victim.

(C) A person who had previously lived in the household of the victim for a period of not less than two years in a relationship substantially similar to a relationship listed in subparagraph (A).

(D) Is another family member of the victim, including the victim's fiancé or fiancée, and witnessed the crime.

(E) Is the primary caretaker of a minor victim, but was not the primary caretaker at the time of the crime.

(b) (1) "Injury" includes physical or emotional injury, or both. However, this article does not apply to emotional injury unless that injury is incurred by a victim who also sustains physical injury or threat of physical injury. For purposes of this article, a victim of a crime committed in violation of Section 261, 262, 271, 273a, 273d, 278, 278.5, 285, 286, 288, 288a, 288.5, or 289, or subdivision (b) or (c) of Section 311.4, of the Penal Code, who sustains emotional injury is presumed to have sustained physical injury. For purposes of this

article, a victim of a crime committed in violation of Section 270 of the Penal Code, as a result of conduct other than a failure to pay child support, who sustains emotional injury is presumed to have sustained physical injury if criminal charges were filed or a prosecuting attorney expresses the opinion that the child is a victim of that section.

(2) It is the intent of the Legislature that in order for the presumption set forth in paragraph (1) relating to a violation of Section 278 or 278.5 of the Penal Code to apply, the deprivation of custody as described in those sections shall have endured for not less than 30 days. For the purposes of this paragraph, the child, and not the nonoffending parent or other caretaker, shall be deemed the victim.

(3) A child who has been the witness of a crime or crimes of domestic violence may be presumed by the board to have sustained physical injury.

(c) "Crime" means a crime or public offense that would constitute a misdemeanor or a felony if committed in California by a competent adult which results in injury to a resident of this state, including a crime or public offense, wherever it may take place, when the resident is temporarily absent from the state. "Crime" includes an act of terrorism, as defined in Section 2331 of Title 18 of the United States Code, committed against a resident of the state, whether or not the act occurs within the state. No act involving the operation of a motor vehicle, aircraft, or water vehicle which results in injury or death constitutes a crime for the purposes of this article, except that a crime shall include any of the following:

(1) Injury or death intentionally inflicted through the use of a motor vehicle, aircraft, or water vehicle.

(2) Injury or death caused by a driver in violation of Section 20001 of the Vehicle Code.

(3) Injury or death caused by a person who is under the influence of any alcoholic beverage or drug.

(4) Injury or death caused by a driver of a motor vehicle in the immediate act of fleeing the scene of a crime in which he or she knowingly and willingly participated.

For the purpose of the limitations imposed by this article, a crime shall mean one act or series of related acts arising from the same course of conduct with the same perpetrator or perpetrators against a victim.

(d) "Pecuniary loss" means the following expenses for which the victim or derivative victim has not been and will not be reimbursed from any other source:

(1) The amount of medical or medical-related expenses incurred by the victim, including inpatient psychological or psychiatric expenses, and including, but not limited to, eyeglasses, hearing aids, dentures, or any prosthetic device taken, lost, or destroyed during the

commission of the crime, or the use of which became necessary as a direct result of the crime.

(2) The amount of outpatient psychiatric, psychological, or other mental health counseling related expenses which became necessary as a direct result of the crime. These counseling services may only be reimbursed if provided by any of the following individuals:

(A) A person licensed as a physician who is certified in psychiatry by the American Board of Psychiatry and Neurology or who has completed a residency in psychiatry.

(B) A person licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(C) A person licensed as a clinical social worker under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code.

(D) A person licensed as a marriage, family, and child counselor under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(E) A person registered as a psychological assistant who is under the supervision of a licensed psychologist or board certified psychiatrist as required by Section 2913 of the Business and Professions Code.

(F) A person registered with the Board of Psychology who is providing services in a nonprofit community agency pursuant to subdivision (d) of Section 2909 of the Business and Professions Code.

(G) A person registered as a marriage, family, and child counselor intern who is under the supervision of a licensed marriage, family, and child counselor, a licensed clinical social worker, a licensed psychologist, or a licensed physician certified in psychiatry, as specified in Section 4980.44 of the Business and Professions Code.

(H) A person registered as an associate clinical social worker, as defined in Section 4996.18 of the Business and Professions Code, who is under the supervision of a licensed clinical social worker, a licensed psychologist, or a board certified psychiatrist.

(3) The loss of income that the victim or the loss of support that the derivative victim has incurred or will incur as a direct result of an injury or death.

(4) Pecuniary loss also includes nonmedical remedial care and treatment rendered in accordance with a religious method of healing recognized by state law.

(5) The amount of family psychiatric, psychological, or mental health counseling expenses necessary as a direct result of the crime for the successful treatment of the victim, provided to family members of the victim in the presence of the victim, whether or not the family member relationship existed at the time of the crime.

(e) "Board" means the State Board of Control.

(f) "Victim centers" means those centers as specified in Section 13835.2 of the Penal Code.

(g) "Peer counselor" means a provider of mental health counseling services who has completed a specialized course in rape crisis counseling skills development, participates in continuing education in rape crisis counseling skills development, and provides rape crisis counseling in consultation with a mental health practitioner licensed within the State of California.

(h) 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. 2.5. Section 13960 of the Government Code is amended to read:

13960. As used in this article:

(a) (1) "Victim" means a resident of the State of California, a member of the military stationed in California, or a family member living with a member of the military stationed in California who sustains injury or death as a direct result of a crime.

(2) "Derivative victim" means a resident of California, or resident of another state, who is one of the following:

(A) At the time of the crime was the parent, sibling, spouse, or child of the victim.

(B) At the time of the crime was living in the household of the victim.

(C) A person who had previously lived in the household of the victim for a period of not less than two years in a relationship substantially similar to a relationship listed in subparagraph (A).

(D) Is another family member of the victim, including the victim's fiancé or fiancée, and witnessed the crime.

(E) Is the primary caretaker of a minor victim, but was not the primary caretaker at the time of the crime.

(b) (1) "Injury" includes physical or emotional injury, or both. However, this article does not apply to emotional injury unless that injury is incurred by a victim who also sustains physical injury or threat of physical injury. For purposes of this article, a victim of a crime committed in violation of Section 261, 262, 271, 273a, 273d, 278, 278.5, 285, 286, 288, 288a, 288.5, or 289, or subdivision (b) or (c) of Section 311.4, of the Penal Code, who sustains emotional injury is presumed to have sustained physical injury. For purposes of this article, a victim of a crime committed in violation of Section 270 of the Penal Code, as a result of conduct other than a failure to pay child support, who sustains emotional injury is presumed to have sustained physical injury if criminal charges were filed. For purposes of this article, a victim of a crime committed in violation of subdivision (d) of Section 261.5 of the Penal Code, who sustains emotional injury, is presumed to have sustained physical injury if felony charges were filed.

(2) It is the intent of the Legislature that in order for the presumption set forth in paragraph (1) relating to a violation of Section 278 or 278.5 of the Penal Code to apply, the deprivation of

custody as described in those sections shall have endured for not less than 30 days. For the purposes of this paragraph, the child, and not the nonoffending parent or other caretaker, shall be deemed the victim.

(3) A child who has been the witness of a crime or crimes of domestic violence may be presumed by the board to have sustained physical injury.

(c) "Crime" means a crime or public offense that would constitute a misdemeanor or a felony if committed in California by a competent adult which results in injury to a resident of this state, including a crime or public offense, wherever it may take place, when the resident is temporarily absent from the state. "Crime" includes an act of terrorism, as defined in Section 2331 of Title 18 of the United States Code, committed against a resident of the state, whether or not the act occurs within the state. No act involving the operation of a motor vehicle, aircraft, or water vehicle which results in injury or death constitutes a crime for the purposes of this article, except that a crime shall include any of the following:

(1) Injury or death intentionally inflicted through the use of a motor vehicle, aircraft, or water vehicle.

(2) Injury or death caused by a driver in violation of Section 20001 of the Vehicle Code.

(3) Injury or death caused by a person who is under the influence of any alcoholic beverage or drug.

(4) Injury or death caused by a driver of a motor vehicle in the immediate act of fleeing the scene of a crime in which he or she knowingly and willingly participated.

(5) Injury or death caused by a person in violation of subdivision (c) of Section 192 or Section 192.5 of the Penal Code.

For the purpose of the limitations imposed by this article, a crime shall mean one act or series of related acts arising from the same course of conduct with the same perpetrator or perpetrators against a victim.

(d) "Pecuniary loss" means the following expenses for which the victim or derivative victim has not been and will not be reimbursed from any other source:

(1) The amount of medical or medical-related expenses incurred by the victim, including inpatient psychological or psychiatric expenses, and including, but not limited to, eyeglasses, hearing aids, dentures, or any prosthetic device taken, lost, or destroyed during the commission of the crime, or the use of which became necessary as a direct result of the crime.

(2) The amount of outpatient psychiatric, psychological, or other mental health counseling related expenses that became necessary as a direct result of the crime. These counseling services may only be reimbursed if provided by any of the following individuals:

(A) A person licensed as a physician who is certified in psychiatry by the American Board of Psychiatry and Neurology or who has completed a residency in psychiatry.

(B) A person licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(C) A person licensed as a clinical social worker under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code.

(D) A person licensed as a marriage, family, and child counselor under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(E) A person registered as a psychological assistant who is under the supervision of a licensed psychologist or board certified psychiatrist as required by Section 2913 of the Business and Professions Code.

(F) A person registered with the Board of Psychology who is providing services in a nonprofit community agency pursuant to subdivision (d) of Section 2909 of the Business and Professions Code.

(G) A person registered as a marriage, family, and child counselor intern who is under the supervision of a licensed marriage, family, and child counselor, a licensed clinical social worker, a licensed psychologist, or a licensed physician certified in psychiatry, as specified in Section 4980.44 of the Business and Professions Code.

(H) A person registered as an associate clinical social worker, as defined in Section 4996.18 of the Business and Professions Code, who is under the supervision of a licensed clinical social worker, a licensed psychologist, or a board certified psychiatrist.

(I) A person who qualifies as a psychology intern as described in Section 2911 of the Business and Professions Code who is under the supervision of a licensed mental health professional (psychiatrist, psychologist, or social worker) in a university hospital or university medical school clinic or a person who has completed the qualifications described in Section 2911 of the Business and Professions Code who is pursuing a postdoctoral and training in a university or university medical school clinic under the supervision of a licensed mental health professional (psychiatrist, psychologist, or social worker) for the purpose of achieving higher clinical competency.

(3) The loss of income that the victim or the loss of support that the derivative victim has incurred or will incur as a direct result of an injury or death.

(4) Pecuniary loss also includes nonmedical remedial care and treatment rendered in accordance with a religious method of healing recognized by state law.

(5) The amount of family psychiatric, psychological, or mental health counseling expenses necessary as a direct result of the crime for the successful treatment of the victim, provided to family

members of the victim in the presence of the victim, whether or not the family member relationship existed at the time of the crime.

(e) "Board" means the State Board of Control.

(f) "Victim centers" means those centers as specified in Section 13835.2 of the Penal Code.

(g) "Peer counselor" means a provider of mental health counseling services who has completed a specialized course in rape crisis counseling skills development, participates in continuing education in rape crisis counseling skills development, and provides rape crisis counseling in consultation with a mental health practitioner licensed within the State of California.

(h) 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. 2.7. Section 13960 is added to the Government Code, to read:

13960. As used in this article:

(a) (1) "Victim" means a resident of the State of California, a member of the military stationed in California, or a family member living with a member of the military stationed in California who sustains injury or death as a direct result of a crime.

(2) "Derivative victim" means a resident of California who is one of the following:

(A) At the time of the crime was the parent, sibling, spouse, or child of the victim.

(B) At the time of the crime was living in the household of the victim.

(C) A person who had previously lived in the household of the victim for a period of not less than two years in a relationship substantially similar to a relationship listed in subparagraph (A).

(D) Is another family member of the victim, including the victim's fiancé, and witnessed the crime.

(b) "Injury" includes physical or emotional injury, or both. However, this article does not apply to emotional injury unless that injury is incurred by a victim who also sustains physical injury or threat of physical injury. For purposes of this article, a victim of a crime committed in violation of Section 261, 262, 271, 273a, 273d, 285, 286, 288, 288a, 288.5, or 289, or subdivision (b) or (c) of Section 311.4, of the Penal Code, who sustains emotional injury is presumed to have sustained physical injury. For purposes of this article, a victim of a crime committed in violation of Section 270 of the Penal Code, as a result of conduct other than a failure to pay child support, who sustains emotional injury is presumed to have sustained physical injury if criminal charges were filed or a prosecuting attorney expresses the opinion that the child is a victim of that section.

(c) "Crime" means a crime or public offense that would constitute a misdemeanor or a felony if committed in California by a competent adult which results in injury to a resident of this state, including a

crime or public offense, wherever it may take place, when the resident is temporarily absent from the state. "Crime" includes an act of terrorism, as defined in Section 2331 of Title 18 of the United States Code, committed against a resident of the state, whether or not the act occurs within the state. No act involving the operation of a motor vehicle, aircraft, or water vehicle which results in injury or death constitutes a crime for the purposes of this article, except that a crime shall include any of the following:

(1) Injury or death intentionally inflicted through the use of a motor vehicle, aircraft, or water vehicle.

(2) Injury or death caused by a driver in violation of Section 20001 of the Vehicle Code.

(3) Injury or death caused by a person who is under the influence of any alcoholic beverage or drug.

(4) Injury or death caused by a driver of a motor vehicle in the immediate act of fleeing the scene of a crime in which he or she knowingly and willingly participated.

For the purpose of the limitations imposed by this article, a crime shall mean one act or series of related acts arising from the same course of conduct with the same perpetrator or perpetrators.

(d) "Pecuniary loss" means the following expenses for which the victim or derivative victim has not been and will not be reimbursed from any other source:

(1) The amount of medical or medical-related expenses incurred by the victim, including inpatient psychological or psychiatric expenses, and including, but not limited to, eyeglasses, hearing aids, dentures, or any prosthetic device taken, lost, or destroyed during the commission of the crime, or the use of which became necessary as a direct result of the crime.

(2) The amount of outpatient psychiatric, psychological, or other mental health counseling related expenses which became necessary as a direct result of the crime. These counseling services may only be reimbursed if provided by any of the following individuals:

(A) A person licensed as a physician who is certified in psychiatry by the American Board of Psychiatry and Neurology or who has completed a residency in psychiatry.

(B) A person licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(C) A person licensed as a clinical social worker under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code.

(D) A person licensed as a marriage, family, and child counselor under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(E) A person registered as a psychological assistant who is under the supervision of a licensed psychologist or board certified

psychiatrist as required by Section 2913 of the Business and Professions Code.

(F) A person registered with the Board of Psychology who is providing services in a nonprofit community agency pursuant to subdivision (d) of Section 2909 of the Business and Professions Code.

(G) A person registered as a marriage, family, and child counselor intern who is under the supervision of a licensed marriage, family, and child counselor, a licensed clinical social worker, a licensed psychologist, or a licensed physician certified in psychiatry, as specified in Section 4980.44 of the Business and Professions Code.

(H) A person registered as an associate clinical social worker, as defined in Section 4996.18 of the Business and Professions Code, who is under the supervision of a licensed clinical social worker, a licensed psychologist, or a board certified psychiatrist.

(3) The loss of income that the victim or the loss of support that the derivative victim has incurred or will incur as a direct result of an injury or death.

(4) Pecuniary loss also includes nonmedical remedial care and treatment rendered in accordance with a religious method of healing recognized by state law.

(5) The amount of family psychiatric, psychological, or mental health counseling expenses necessary as a direct result of the crime for the successful treatment of the victim, provided to family members of the victim in the presence of the victim, whether or not the family member relationship existed at the time of the crime.

(e) "Board" means the State Board of Control.

(f) "Victim centers" means those centers as specified in Section 13835.2 of the Penal Code.

(g) "Peer counselor" means a provider of mental health counseling services who has completed a specialized course in rape crisis counseling skills development, participates in continuing education in rape crisis counseling skills development, and provides rape crisis counseling in consultation with a mental health practitioner licensed within the State of California.

(h) This section shall become operative on January 1, 2003.

SEC. 3. Section 13961.01 is added to the Government Code, to read:

13961.01. (a) In addition to the additional extension for good cause authorized under Section 13961, the board may also for good cause grant an additional extension beyond three years when the claim is filed under any of the following circumstances:

(1) The application is filed by a minor derivative victim where the direct victim is permanently disabled or dies as a result of the crime.

(2) The application is filed based on a crime described in Section 261, 286, 288, 288a, 288.5, or 289 of the Penal Code, or penetration of an anal or genital opening as described in Section 289.5 of the Penal Code as it existed prior to January 1, 1995, and all of the following criteria are met:

(A) The victim was under the age of 18 years at the time the crime was committed.

(B) The crime was reported to a law enforcement agency, as defined in subdivision (p) of Section 290 of the Penal Code, or a child protective agency, as defined in Section 11165.9 of the Penal Code.

(C) The application is accompanied by either of the following:

(i) A copy of the report of the crime filed with an agency described in subparagraph (B) and a recommendation from either the investigating officer or the prosecuting attorney that the application for late filing be approved, and the application is filed within one year of the date the victim receives the recommendation.

(ii) Documentation that a complaint, information, or indictment alleging the crime giving rise to the application was filed.

(3) The direct victim dies as a result of the crime, but the fact is not discovered until after the expiration of the time limits imposed by this section.

(b) No application shall be denied under paragraphs (1) to (3), inclusive, of subdivision (a) solely because the crime was not reported to law enforcement within a specified time period.

(c) For the purposes of this section, the board may consider applications filed with the board on or after October 4, 1993, that meet the criteria for delayed filing as set forth in subdivision (a).

(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. 4. Section 13964 of the Government Code is amended to read:

13964. (a) After having heard the evidence relevant to the application for assistance, the board shall approve the application if a preponderance of the evidence shows that as a direct result of the crime the victim or derivative victim incurred an injury which resulted in a pecuniary loss.

(b) An application for assistance may be denied, in whole or in part, if the board finds that denial is appropriate because of the nature of the victim's or other applicant's involvement in the events leading to the crime or the involvement of the persons whose injury or death give rise to the application.

(c) No victim shall be eligible for assistance under this article under any of the following circumstances:

(1) The board finds that the victim knowingly and willingly participated in the commission of the crime.

(2) The board finds that the victim failed to cooperate reasonably with a law enforcement agency in the apprehension and conviction of a criminal committing the crime.

(d) No derivative victim shall be eligible for assistance under this article under any of the following circumstances:

(1) The board finds that the victim or derivative victim knowingly and willingly participated in the commission of the crime.

(2) The board finds that the victim or derivative victim failed to cooperate reasonably with a law enforcement agency in the apprehension and conviction of a criminal committing the crime.

(e) Notwithstanding paragraph (2) of subdivision (c) and paragraph (2) of subdivision (d), for claims based on domestic violence the Board of Control shall adopt guidelines that allow the board to consider and approve applications for assistance based on domestic violence, taking into account the victim's age, physical condition, psychological state, and any compelling health or safety reasons, including, but not limited to, a reasonable fear of retaliation or harm that would jeopardize the well-being of the victim or the victim's family, in evaluating a victim's cooperation with law enforcement, and giving due consideration to the degree of cooperation of which the victim is capable in light of the presence of any of these factors.

For the purposes of this section, the application of a derivative victim of domestic violence under the age of 18 years shall not be deemed ineligible on the basis of ineligibility of the victim under subdivision (b).

(f) No application shall be denied solely because no criminal complaint has been filed, unless the complaint has not been filed for one of the reasons stated in subdivision (c) or (d). Moreover, no application shall be denied because a criminal complaint is filed, but later dismissed, if the dismissal is not for the reasons stated in subdivision (c) or (d).

(g) Once an application has been accepted by the board pursuant to subdivision (b) of Section 13962, as the application pertains to medical or medical-related expenses, the claim shall continue to be processed and either awarded or denied pursuant to this article in the event of the death of the applicant.

(h) If a nonoffending parent in a child sexual abuse case cooperates with the prosecution or Child Protective Services by providing assistance to law enforcement in the disposition of the case, that parent shall not be considered uncooperative within the meaning of this section and shall be eligible, if otherwise qualified, for restitution as a derivative victim pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section 13965.

(i) 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. 4.5. Section 13964 of the Government Code is amended to read:

13964. (a) After having heard the evidence relevant to the application for assistance, the board shall approve the application if a preponderance of the evidence shows that as a direct result of the crime the victim or derivative victim incurred an injury that resulted in a pecuniary loss.

(b) An application for assistance may be denied, in whole or in part, if the board finds that denial is appropriate because of the nature of the victim's or other applicant's involvement in the events leading to the crime or the involvement of the persons whose injury or death give rise to the application. In the case of a minor, the board shall consider the minor's age, physical condition, and psychological state as well as any compelling health and safety concerns in determining whether the minor's application should be denied pursuant to this section.

(c) No victim shall be eligible for assistance under this article under either of the following circumstances:

(1) The board finds that the victim knowingly and willingly participated in the commission of the crime. This paragraph shall not apply if the injury occurred as a direct result of a crime committed in violation of subdivision (d) of Section 261.5 of the Penal Code.

(2) The board finds that the victim failed to cooperate reasonably with a law enforcement agency in the apprehension and conviction of a criminal committing the crime. In the case of a minor, the board shall consider the minor's age, physical condition, and psychological state as well as any compelling health and safety concerns in determining whether the minor is eligible for assistance pursuant to this section.

(d) No derivative victim shall be eligible for assistance under this article under either of the following circumstances:

(1) The board finds that the victim or derivative victim knowingly and willingly participated in the commission of the crime.

(2) The board finds that the victim or derivative victim failed to cooperate reasonably with a law enforcement agency in the apprehension and conviction of a criminal committing the crime.

(e) Notwithstanding paragraph (2) of subdivision (c) and paragraph (2) of subdivision (d), for claims based on domestic violence the Board of Control shall adopt guidelines that allow the board to consider and approve applications for assistance based on domestic violence, taking into account the victim's age, physical condition, psychological state, and any compelling health or safety reasons, including, but not limited to, a reasonable fear of retaliation or harm that would jeopardize the well-being of the victim or the victim's family, in evaluating a victim's cooperation with law enforcement, and giving due consideration to the degree of cooperation of which the victim is capable in light of the presence of any of these factors.

For the purposes of this section, the application of a derivative victim of domestic violence under the age of 18 years shall not be deemed ineligible on the basis of ineligibility of the victim under subdivision (b).

(f) No application shall be denied solely because no criminal complaint has been filed, unless the complaint has not been filed for one of the reasons stated in subdivision (c) or (d). Moreover, no

application shall be denied because a criminal complaint is filed, but later dismissed, if the dismissal is not for the reasons stated in subdivision (c) or (d).

(g) Once an application has been accepted by the board pursuant to subdivision (b) of Section 13962, as the application pertains to medical or medical-related expenses, the claim shall continue to be processed and either awarded or denied pursuant to this article in the event of the death of the applicant.

(h) If a nonoffending parent in a child sexual abuse case cooperates with the prosecution or Child Protective Services by providing assistance to law enforcement in the disposition of the case, that parent shall not be considered uncooperative within the meaning of this section and shall be eligible, if otherwise qualified, for restitution as a derivative victim pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section 13965.

(i) 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. 4.7. Section 13964 is added to the Government Code, to read:

13964. (a) After having heard the evidence relevant to the application for assistance, the board shall approve the application if a preponderance of the evidence shows that as a direct result of the crime the victim or derivative victim incurred an injury which resulted in a pecuniary loss.

(b) An application for assistance may be denied, in whole or in part, if the board finds that denial is appropriate because of the nature of the victim's or other applicant's involvement in the events leading to the crime or the involvement of the persons whose injury or death give rise to the application.

(c) No victim shall be eligible for assistance under this article under any of the following circumstances:

(1) The board finds that the victim knowingly and willingly participated in the commission of the crime.

(2) The board finds that the victim failed to cooperate with a law enforcement agency in the apprehension and conviction of a criminal committing the crime.

(d) No derivative victim shall be eligible for assistance under this article under any of the following circumstances:

(1) The board finds that the victim or derivative victim knowingly and willingly participated in the commission of the crime.

(2) The board finds that the victim or derivative victim failed to cooperate with a law enforcement agency in the apprehension and conviction of a criminal committing the crime.

(e) No application shall be denied solely because no criminal complaint has been filed, unless the complaint has not been filed for one of the reasons stated in subdivision (c) or (d). Moreover, no application shall be denied because a criminal complaint is filed, but

later dismissed, if the dismissal is not for the reasons stated in subdivision (c) or (d).

(f) Once an application has been accepted by the board pursuant to subdivision (b) of Section 13962, as the application pertains to medical or medical-related expenses, the claim shall continue to be processed and either awarded or denied pursuant to this article in the event of the death of the applicant.

(g) If a nonoffending parent in a child sexual abuse case cooperates with the prosecution or Child Protective Services by providing assistance to law enforcement in the disposition of the case, that parent shall not be considered uncooperative within the meaning of this section and shall be eligible, if otherwise qualified, for restitution as a derivative victim pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section 13965.

(h) This section shall become operative on January 1, 2003.

SEC. 5. Section 13965 of the Government Code is amended to read:

13965. (a) If the application for assistance is approved, the board shall determine what type of state assistance will best aid the victim or derivative victim. The board may take any or all of the following actions:

(1) Reimburse the following persons for the expense of their out-patient mental health counseling when that mental health counseling is necessary as a direct result of the crime:

(A) A victim in an amount not to exceed ten thousand dollars ($10,000).

(B) A derivative victim who is the surviving parent, sibling, child, spouse, or fiancé of a victim of a crime which directly resulted in the death of the victim in an amount not to exceed ten thousand dollars ($10,000).

(C) A derivative victim, as defined in subparagraph (A), (B), (C), or (D) of paragraph (2) of subdivision (a) of Section 13960, who is the primary caretaker of a minor victim of sexual or physical abuse whose claim is not denied or reduced pursuant to subdivision (b) or (d) of Section 13964 in a total amount not to exceed ten thousand dollars ($10,000) for not more than two derivative victims described in this subparagraph.

(D) A derivative victim not eligible for reimbursement pursuant to subparagraph (B) or (C) in an amount not to exceed three thousand dollars ($3,000), provided that mental health counseling of a derivative victim under subparagraph (E) of paragraph (2) of subdivision (a) of Section 13960 shall be reimbursed only if that counseling is necessary for the treatment of the victim.

The board may authorize a direct cash payment to a provider of psychological or psychiatric treatment or mental health counseling services, including peer counseling services provided by a rape crisis center as defined by Section 13837 of the Penal Code or to either the victim or the derivative victim, equal to the pecuniary loss

attributable to medical or medical-related expenses, including counseling, directly resulting from the injury. Reimbursement on the initial claim for any psychological, psychiatric, or mental health counseling services, including peer counseling services provided by a rape crisis center, shall, if the application has been approved, be paid by the board within 90 days of the date of receipt of the claim for payment, with subsequent payments to be made to the provider within one month of the receipt of a claim for payment. However, the board may not authorize without good cause a direct cash payment to a licensed health care provider or rape crisis center over the objection of the applicant.

When a public agency, including a court or district attorney or a police, county child protective services, or other state or local governmental agency, refers a victim of crime to a private nonprofit agency for treatment for that victim, the private nonprofit agency shall be reimbursed for those services at the level of the normal and customary fee charged by the private nonprofit agency to clients with adequate means of payment for its services, except that this reimbursement shall not exceed the maximum reimbursement rates set by the board and may be made only to the extent that the victim otherwise qualifies for services under the victims of crime program and that other reimbursement or direct subsidies are not available to serve the victim.

Payments authorized pursuant to this paragraph for peer counseling services provided by a rape crisis center shall not exceed fifteen dollars ($15) for each hour of services provided. Those services shall be limited to individual, in-person counseling on a face-to-face basis for a period not to exceed 10 weeks plus one series of facilitated support group counseling sessions.

(2) Authorize a cash payment to the victim equal to the pecuniary loss resulting from loss of wages directly resulting from the injury. Loss of wages shall not be paid by the board for more than two years following the crime. However, loss of wages may be extended for one additional year if the victim is either enrolled in a program of retraining or other rehabilitation approved by the board or has established to the satisfaction of the board that because of his or her disability arising from the crime he or she is unable to participate in any retraining or rehabilitation. If the board determines, after review of an application for assistance, including the evaluation of a qualified provider, that pecuniary loss for which payment may be made under this paragraph is expected to continue more than six months after the date of approval of the victim's application for assistance, disbursement shall commence and continue on a monthly basis for the period of time pecuniary loss is expected to continue.

(3) Authorize a cash payment to a derivative victim described in subparagraphs (A) and (B) of paragraph (2) of subdivision (a) of Section 13960 who was legally dependent on the victim at the time

of the crime for the loss of support incurred by that person as a direct result of the crime.

(A) Loss of support shall not be paid by the board for income lost by an adult for a period of more than two years and shall not extend more than three years following the date of the crime.

(B) Loss of support shall not be paid by the board on behalf of a minor for a period beyond the child's attaining the age of 18 years.

(C) The total amount payable to all derivative victims for loss of support pursuant to this paragraph as the result of one crime shall not exceed forty-six thousand dollars ($46,000).

(4) Authorize cash payments to or on behalf of the victim for job retraining or similar employment-oriented rehabilitative services.

(5) Obtain an independent examination and report from any provider of psychological or psychiatric treatment or mental health counseling services, if it believes there is a reasonable basis for requesting an additional evaluation. In cases where the crime involves sexual assault, the provider shall have expertise in the needs of sexual assault victims. In cases where the crime involves child abuse or molestation, the provider shall have expertise in the needs of victims of child abuse or molestation, as appropriate. When a reevaluation is obtained, payments shall not be discontinued prior to completion of the reevaluation.

(6) When a victim dies as a direct result of a crime, the board may reimburse any individual who voluntarily, and without anticipation of personal gain, pays or assumes the obligation to pay, the medical or burial expenses incurred as a direct result of the crime for the medical or burial expenses incurred in an amount not to exceed the rates or limitations established by the board.

(7) The total award to or on behalf of the victim or a derivative victim shall not exceed twenty-three thousand dollars ($23,000), and may be increased only in accordance with this section.

(8) In the event that the victim requests that the board give priority to reimbursement of loss of wages, the board shall not pay medical expenses or mental health counseling expenses except upon the request of the victim or after determining that payment of these expenses will not decrease the funds available to the victim for payment of loss of wages.

(9) The board may authorize a direct cash payment to a provider of services that are reimbursable pursuant to this article. However, the board may not, without good cause, authorize a direct cash payment to a provider over the objection of the victim or applicant.

(b) Assistance granted pursuant to this article shall not disqualify an otherwise eligible victim or derivative victim from participation in any other public assistance program.

(c) Cash payments made pursuant to this article may be on a one-time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of assistance according to the

victim's or derivative victim's need, subject to the maximum limits provided in this section.

(d) The board shall pay attorney's fees representing the reasonable value of legal services rendered to the applicant, in an amount equal to 10 percent of the amount of the award, or five hundred dollars ($500), whichever is less for each victim and each derivative victim. An attorney receiving fees from another source may waive the right to receive fees under this section. Payments under this section shall be in addition to any amount authorized or ordered under subdivision (d) of Section 13969.1.

(e) No attorney shall charge, demand, receive, or collect any amount for services rendered in connection with any proceedings under this article except as awarded under this article.

(f) The maximum cash payments authorized in paragraph (7) of subdivision (a) shall be increased to forty-six thousand dollars ($46,000) if federal funds for those increases are available.

(g) Notwithstanding subdivisions (a) and (f), a victim injured between January 1, 1985, and December 31, 1985, shall be entitled to receive a maximum cash payment of forty-six thousand dollars ($46,000) if federal funds for these increases are available, but only for costs in excess of limitations provided for in subdivision (a) which are attributable to medical or medical-related expenses, except for psychological or psychiatric treatment, or mental health counseling services.

(h) Notwithstanding any conflicting provision of this chapter, the board may make additional payments for purposes described in paragraph (1) of subdivision (a) to any victim who filed an application with the board on or after December 1, 1982, who was a victim of a crime involving sexual assault, and who is a minor at the time the additional payments pursuant to this subdivision are made. The payments authorized by this subdivision shall not exceed the limits imposed by subdivisions (a) and (j).

(i) Reimbursement for any medical or medical-related services shall, if the victim's application has been approved, be paid by the board within an average of 90 days from receipt of the claim for payment. Payments to a medical or mental health provider under this subdivision or paragraph (1) of subdivision (a) shall not be discontinued prior to completion of any reevaluation. Whether or not a reevaluation is obtained, if the board determines that payments to a provider shall be discontinued, the board shall notify the provider of their discontinuance within 30 days of its determination.

(j) The board may establish maximum rates and service limitations for reimbursement of medical and medical-related expenses, including counseling expenses, for which restitution is requested pursuant to this section. For mental health and counseling services, rates shall not exceed the statewide average. The adoption, amendment, and repeal of these maximum rates shall not be subject to the Administrative Procedure Act under Chapter 3.5

(commencing with Section 11340) of Part 1. An informational copy of the maximum rates shall be filed with the Secretary of State upon adoption by the board. A provider who accepts payment from the program for a service shall accept the program's rates as payment in full and shall not accept any payment on account of the service from any other source if the total of payments accepted would exceed the maximum rate set by the board for that service.

To assure service limitations which are uniform and appropriate to the levels of treatment required by the victim or derivative victim, the board may review all claims for these services as necessary to ensure their medical necessity. The board may further require additional documentation, information, or medical review of cases of continuing treatment which are projected to exceed five thousand dollars ($5,000) to determine the need to continue treatment in excess of that amount. The board may accept or reject claims for the amount in excess of five thousand dollars ($5,000) by applying the same standards applicable to processing the initial claim or may approve a continuing treatment regimen for a specific interval or subject to periodic review as appropriate. All information requested of the treating therapist shall be provided at no cost to the applicant, the board, or to local victim centers, pursuant to subdivision (b) of Section 13962. Requests for additional information shall be made in a timely manner so as not to interfere with necessary treatment.

(k) The authority provided by this section shall not be construed to in any way diminish, enhance, or otherwise affect any authority which the board may have under current law except as explicitly provided in this section.

(*l*) The board, in its discretion, may make payments directly to providers prior to verification.

(m) Notwithstanding paragraph (1) of subdivision (a), the board may reimburse a victim or derivative victim for mental health counseling in excess of that authorized by that paragraph if the claim is based on dire or exceptional circumstances that require more extensive treatment, as approved by the board.

(n) Notwithstanding paragraph (1) of subdivision (a), if, as of December 31, 1993, a person has incurred mental health counseling expenses pursuant to this article in excess of one-half of the amount specified in that subdivision, the board may award, in addition to amounts awarded for previously incurred expenses, an amount equal to not more than one-half of the applicable maximum amount specified in that paragraph or any additional amounts as the board determines is necessary.

(o) The limitations on the amounts which the board may reimburse for loss of support and loss of wages pursuant to paragraphs (2) and (3) of subdivision (a) shall not apply to victims or derivative victims whose claims for loss of wages and loss of support had been approved prior to January 1, 1994.

(p) 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. 5.5. Section 13965 of the Government Code is amended to read:

13965. (a) If the application for assistance is approved, the board shall determine what type of state assistance will best aid the victim or derivative victim. The board may take any or all of the following actions:

(1) Reimburse the following persons for the expense of their out-patient mental health counseling when that mental health counseling is necessary as a direct result of the crime:

(A) A victim in an amount not to exceed ten thousand dollars ($10,000).

(B) A derivative victim who is the surviving parent, sibling, child, spouse, or fiancé of a victim of a crime which directly resulted in the death of the victim in an amount not to exceed ten thousand dollars ($10,000).

(C) A derivative victim, as defined in subparagraph (A), (B), (C), or (D) of paragraph (2) of subdivision (a) of Section 13960, who is the primary caretaker of a minor victim of sexual or physical abuse whose claim is not denied or reduced pursuant to subdivision (b) or (d) of Section 13964 in a total amount not to exceed ten thousand dollars ($10,000) for not more than two derivative victims described in this subparagraph.

(D) A derivative victim not eligible for reimbursement pursuant to subparagraph (B) or (C) in an amount not to exceed three thousand dollars ($3,000), provided that mental health counseling of a derivative victim under subparagraph (E) of paragraph (2) of subdivision (a) of Section 13960 shall be reimbursed only if that counseling is necessary for the treatment of the victim.

(E) A victim of a crime committed in violation of subdivision (d) of Section 261.5 of the Penal Code in an amount not to exceed three thousand dollars ($3,000) for mental health counseling expenses only. A derivative victim of a crime committed in violation of subdivision (d) of Section 261.5 of the Penal Code shall not be eligible for reimbursement of mental health counseling expenses.

The board may authorize a direct cash payment to a provider of psychological or psychiatric treatment or mental health counseling services, including peer counseling services provided by a rape crisis center as defined by Section 13837 of the Penal Code or to either the victim or the derivative victim, equal to the pecuniary loss attributable to medical or medical-related expenses, including counseling, directly resulting from the injury. Reimbursement on the initial claim for any psychological, psychiatric, or mental health counseling services, including peer counseling services provided by a rape crisis center, shall, if the application has been approved, be paid by the board within 90 days of the date of receipt of the claim

for payment, with subsequent payments to be made to the provider within one month of the receipt of a claim for payment. However, the board may not authorize without good cause a direct cash payment to a licensed health care provider or rape crisis center over the objection of the applicant.

When a public agency, including a court or district attorney or a police, county child protective services, or other state or local governmental agency, refers a victim of crime to a private nonprofit agency for treatment for that victim, the private nonprofit agency shall be reimbursed for those services at the level of the normal and customary fee charged by the private nonprofit agency to clients with adequate means of payment for its services, except that this reimbursement shall not exceed the maximum reimbursement rates set by the board and may be made only to the extent that the victim otherwise qualifies for services under the victims of crime program and that other reimbursement or direct subsidies are not available to serve the victim.

Payments authorized pursuant to this paragraph for peer counseling services provided by a rape crisis center shall not exceed fifteen dollars ($15) for each hour of services provided. Those services shall be limited to individual, in-person counseling on a face-to-face basis for a period not to exceed 10 weeks plus one series of facilitated support group counseling sessions.

(2) Authorize a cash payment to the victim equal to the pecuniary loss resulting from loss of wages directly resulting from the injury. Loss of wages shall not be paid by the board for more than three years following the crime. If the board determines, after review of an application for assistance, including the evaluation of a qualified provider, that pecuniary loss for which payment may be made under this paragraph is expected to continue more than six months after the date of approval of the victim's application for assistance, disbursement shall commence and continue on a monthly basis for the period of time pecuniary loss is expected to continue.

(3) Authorize a cash payment to a derivative victim described in subparagraphs (A) and (B) of paragraph (2) of subdivision (a) of Section 13960 who was legally dependent on the victim at the time of the crime for the loss of support incurred by that person as a direct result of the crime.

(A) Loss of support shall not be paid by the board for income lost by an adult for a period of more than three years following the date of the crime.

(B) Loss of support shall not be paid by the board on behalf of a minor for a period beyond the child's attaining the age of 18 years.

(C) The total amount payable to all derivative victims for loss of support pursuant to this paragraph as the result of one crime shall not exceed forty-six thousand dollars ($46,000).

(4) Authorize cash payments to or on behalf of the victim for job retraining or similar employment-oriented rehabilitative services.

(5) Obtain an independent examination and report from any provider of psychological or psychiatric treatment or mental health counseling services, if it believes there is a reasonable basis for requesting an additional evaluation. In cases where the crime involves sexual assault, the provider shall have expertise in the needs of sexual assault victims. In cases where the crime involves child abuse or molestation, the provider shall have expertise in the needs of victims of child abuse or molestation, as appropriate. When a reevaluation is obtained, payments shall not be discontinued prior to completion of the reevaluation.

(6) When a victim dies as a direct result of a crime, the board may reimburse any individual who voluntarily, and without anticipation of personal gain, pays or assumes the obligation to pay, the medical or burial expenses incurred as a direct result of the crime for the medical or burial expenses incurred in an amount not to exceed the rates or limitations established by the board.

(7) The total award to or on behalf of the victim or a derivative victim shall not exceed twenty-three thousand dollars ($23,000), and may be increased only in accordance with this section.

(8) In the event that the victim requests that the board give priority to reimbursement of loss of wages, the board shall not pay medical expenses or mental health counseling expenses except upon the request of the victim or after determining that payment of these expenses will not decrease the funds available to the victim for payment of loss of wages.

(9) The board may authorize a direct cash payment to a provider of services that are reimbursable pursuant to this article. However, the board may not, without good cause, authorize a direct cash payment to a provider over the objection of the victim or applicant.

(b) Assistance granted pursuant to this article shall not disqualify an otherwise eligible victim or derivative victim from participation in any other public assistance program.

(c) Cash payments made pursuant to this article may be on a one-time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of assistance according to the victim's or derivative victim's need, subject to the maximum limits provided in this section.

(d) The board shall pay attorney's fees representing the reasonable value of legal services rendered to the applicant, in an amount equal to 10 percent of the amount of the award, or five hundred dollars ($500), whichever is less for each victim and each derivative victim. An attorney receiving fees from another source may waive the right to receive fees under this section. Payments under this section shall be in addition to any amount authorized or ordered under subdivision (d) of Section 13969.1.

(e) No attorney shall charge, demand, receive, or collect any amount for services rendered in connection with any proceedings under this article except as awarded under this article.

(f) The maximum cash payments authorized in paragraph (7) of subdivision (a) shall be increased to forty-six thousand dollars ($46,000) if federal funds for those increases are available.

(g) Notwithstanding subdivisions (a) and (f), a victim injured between January 1, 1985, and December 31, 1985, shall be entitled to receive a maximum cash payment of forty-six thousand dollars ($46,000) if federal funds for these increases are available, but only for costs in excess of limitations provided for in subdivision (a) which are attributable to medical or medical-related expenses, except for psychological or psychiatric treatment, or mental health counseling services.

(h) Notwithstanding any conflicting provision of this chapter, the board may make additional payments for purposes described in paragraph (1) of subdivision (a) to any victim who filed an application with the board on or after December 1, 1982, who was a victim of a crime involving sexual assault, and who is a minor at the time the additional payments pursuant to this subdivision are made. The payments authorized by this subdivision shall not exceed the limits imposed by subdivisions (a) and (j).

(i) Reimbursement for any medical or medical-related services shall, if the victim's application has been approved, be paid by the board within an average of 90 days from receipt of the claim for payment. Payments to a medical or mental health provider under this subdivision or paragraph (1) of subdivision (a) shall not be discontinued prior to completion of any reevaluation. Whether or not a reevaluation is obtained, if the board determines that payments to a provider shall be discontinued, the board shall notify the provider of their discontinuance within 30 days of its determination.

(j) The board may establish maximum rates and service limitations for reimbursement of medical and medical-related expenses, including counseling expenses, for which restitution is requested pursuant to this section. For mental health and counseling services, rates shall not exceed the statewide average. The adoption, amendment, and repeal of these maximum rates shall not be subject to the Administrative Procedure Act under Chapter 3.5 (commencing with Section 11340) of Part 1. An informational copy of the maximum rates shall be filed with the Secretary of State upon adoption by the board. A provider who accepts payment from the program for a service shall accept the program's rates as payment in full and shall not accept any payment on account of the service from any other source if the total of payments accepted would exceed the maximum rate set by the board for that service.

To assure service limitations which are uniform and appropriate to the levels of treatment required by the victim or derivative victim, the board may review all claims for these services as necessary to ensure their medical necessity. The board may further require additional documentation, information, or medical review of cases of continuing treatment which are projected to exceed five thousand

dollars ($5,000) to determine the need to continue treatment in excess of that amount. The board may accept or reject claims for the amount in excess of five thousand dollars ($5,000) by applying the same standards applicable to processing the initial claim or may approve a continuing treatment regimen for a specific interval or subject to periodic review as appropriate. All information requested of the treating therapist shall be provided at no cost to the applicant, the board, or to local victim centers, pursuant to subdivision (b) of Section 13962. Requests for additional information shall be made in a timely manner so as not to interfere with necessary treatment.

(k) The authority provided by this section shall not be construed to in any way diminish, enhance, or otherwise affect any authority which the board may have under current law except as explicitly provided in this section.

(*l*) The board, in its discretion, may make payments directly to providers prior to verification.

(m) Notwithstanding paragraph (1) of subdivision (a), the board may reimburse a victim or derivative victim for mental health counseling in excess of that authorized by that paragraph if the claim is based on dire or exceptional circumstances that require more extensive treatment, as approved by the board.

(n) Notwithstanding paragraph (1) of subdivision (a), if, as of December 31, 1993, a person has incurred mental health counseling expenses pursuant to this article in excess of one-half of the amount specified in that subdivision, the board may award, in addition to amounts awarded for previously incurred expenses, an amount equal to not more than one-half of the applicable maximum amount specified in that paragraph or any additional amounts as the board determines is necessary.

(o) The limitations on the amounts which the board may reimburse for loss of support and loss of wages pursuant to paragraphs (2) and (3) of subdivision (a) shall not apply to victims or derivative victims whose claims for loss of wages and loss of support had been approved prior to January 1, 1994.

(p) The total award to or on behalf of a victim of a crime committed in violation of subdivision (d) of Section 261.5 of the Penal Code shall not exceed three thousand dollars ($3,000) for mental health counseling expenses only.

(q) 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. 5.7. Section 13965 is added to the Government Code, to read:

13965. (a) If the application for assistance is approved, the board shall determine what type of state assistance will best aid the victim or derivative victim. The board may take any or all of the following actions:

(1) Reimburse the following persons for the expense of their outpatient mental health counseling when that mental health counseling is necessary as a direct result of the crime:

(A) A victim in an amount not to exceed ten thousand dollars ($10,000).

(B) A derivative victim who is the surviving parent, sibling, child, spouse, or fiancé of a victim of a crime which directly resulted in the death of the victim in an amount not to exceed ten thousand dollars ($10,000).

(C) A derivative victim who is the primary caretaker of a minor victim of sexual or physical abuse whose claim is not denied or reduced pursuant to subdivision (b) or (d) of Section 13964 in a total amount not to exceed ten thousand dollars ($10,000) for not more than two derivative victims described in this subparagraph.

(D) A derivative victim not eligible for reimbursement pursuant to subparagraph (B) or (C) in an amount not to exceed three thousand dollars ($3,000).

The board may authorize a direct cash payment to a provider of psychological or psychiatric treatment or mental health counseling services, including peer counseling services provided by a rape crisis center as defined by Section 13837 of the Penal Code or to either the victim or the derivative victim, equal to the pecuniary loss attributable to medical or medical-related expenses, including counseling, directly resulting from the injury. Reimbursement on the initial claim for any psychological, psychiatric, or mental health counseling services, including peer counseling services provided by a rape crisis center, shall, if the application has been approved, be paid by the board within 90 days of the date of receipt of the claim for payment, with subsequent payments to be made to the provider within one month of the receipt of a claim for payment. However, the board may not authorize without good cause a direct cash payment to a licensed health care provider or rape crisis center over the objection of the applicant.

When a public agency, including a court or district attorney or a police, county child protective services, or other state or local governmental agency, refers a victim of crime to a private nonprofit agency for treatment for that victim, the private nonprofit agency shall be reimbursed for those services at the level of the normal and customary fee charged by the private nonprofit agency to clients with adequate means of payment for its services, except that this reimbursement shall not exceed the maximum reimbursement rates set by the board and may be made only to the extent that the victim otherwise qualifies for services under the victims of crime program and that other reimbursement or direct subsidies are not available to serve the victim.

Payments authorized pursuant to this paragraph for peer counseling services provided by a rape counseling center shall not exceed fifteen dollars ($15) for each hour of services provided. Those

services shall be limited to individual, in-person counseling on a face-to-face basis for a period not to exceed 10 weeks plus one series of facilitated support group counseling sessions.

(2) Authorize a cash payment to the victim equal to the pecuniary loss resulting from loss of wages directly resulting from the injury. Loss of wages shall not be paid by the board for more than two years following the crime. However, loss of wages may be extended for one additional year if the victim is either enrolled in a program of retraining or other rehabilitation approved by the board or has established to the satisfaction of the board that because of his or her disability arising from the crime he or she is unable to participate in any retraining or rehabilitation. If the board determines, after review of an application for assistance, including the evaluation of a qualified provider, that pecuniary loss for which payment may be made under this paragraph is expected to continue more than six months after the date of approval of the victim's application for assistance, disbursement shall commence and continue on a monthly basis for the period of time pecuniary loss is expected to continue.

(3) Authorize a cash payment to a derivative victim described in subparagraphs (A) and (B) of paragraph (2) of subdivision (a) of Section 13960 who was legally dependent on the victim at the time of the crime for the loss of support incurred by that person as a direct result of the crime.

(A) Loss of support shall not be paid by the board for income lost by an adult for a period of more than two years and shall not extend more than three years following the date of the crime.

(B) Loss of support shall not be paid by the board on behalf of a minor for a period beyond the child's attaining the age of 18 years.

(C) The total amount payable to all derivative victims for loss of support pursuant to this paragraph as the result of one crime shall not exceed forty-six thousand dollars ($46,000).

(4) Authorize cash payments to or on behalf of the victim for job retraining or similar employment-oriented rehabilitative services.

(5) Obtain an independent examination and report from any provider of psychological or psychiatric treatment or mental health counseling services, if it believes there is a reasonable basis for requesting an additional evaluation. In cases where the crime involves sexual assault, the provider shall have expertise in the needs of sexual assault victims. In cases where the crime involves child abuse or molestation, the provider shall have expertise in the needs of victims of child abuse or molestation, as appropriate. When a reevaluation is obtained, payments shall not be discontinued prior to completion of the reevaluation.

(6) When a victim dies as a direct result of a crime, the board may reimburse any individual who voluntarily, and without anticipation of personal gain, pays or assumes the obligation to pay, the medical or burial expenses incurred as a direct result of the crime for the

medical or burial expenses incurred in an amount not to exceed the rates or limitations established by the board.

(7) The total award to or on behalf of the victim or a derivative victim shall not exceed twenty-three thousand dollars ($23,000), and may be increased only in accordance with this section.

(8) In the event that the victim requests that the board give priority to reimbursement of loss of wages, the board shall not pay medical expenses or mental health counseling expenses except upon the request of the victim or after determining that payment of these expenses will not decrease the funds available to the victim for payment of loss of wages.

(9) The board may authorize a direct cash payment to a provider of services that are reimbursable pursuant to this article. However, the board may not, without good cause, authorize a direct cash payment to a provider over the objection of the victim or applicant.

(b) Assistance granted pursuant to this article shall not disqualify an otherwise eligible victim or derivative victim from participation in any other public assistance program.

(c) Cash payments made pursuant to this article may be on a one-time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of assistance according to the victim's or derivative victim's need, subject to the maximum limits provided in this section.

(d) The board shall pay attorney's fees representing the reasonable value of legal services rendered to the applicant, in an amount equal to 10 percent of the amount of the award, or five hundred dollars ($500), whichever is less for each victim and each derivative victim. An attorney receiving fees from another source may waive the right to receive fees under this section. Payments under this section shall be in addition to any amount authorized or ordered under subdivision (d) of Section 13969.1.

(e) No attorney shall charge, demand, receive, or collect any amount for services rendered in connection with any proceedings under this article except as awarded under this article.

(f) The maximum cash payments authorized in paragraph (7) of subdivision (a) shall be increased to forty-six thousand dollars ($46,000) if federal funds for those increases are available.

(g) Notwithstanding subdivisions (a) and (f), a victim injured between January 1, 1985, and December 31, 1985, shall be entitled to receive a maximum cash payment of forty-six thousand dollars ($46,000) if federal funds for these increases are available, but only for costs in excess of limitations provided for in subdivision (a) which are attributable to medical or medical-related expenses, except for psychological or psychiatric treatment, or mental health counseling services.

(h) Notwithstanding any conflicting provision of this chapter, the board may make additional payments for purposes described in paragraph (1) of subdivision (a) to any victim who filed an

application with the board on or after December 1, 1982, who was a victim of a crime involving sexual assault, and who is a minor at the time the additional payments pursuant to this subdivision are made. The payments authorized by this subdivision shall not exceed the limits imposed by subdivisions (a) and (j).

(i) Reimbursement for any medical or medical-related services shall, if the victim's application has been approved, be paid by the board within an average of 90 days from receipt of the claim for payment. Payments to a medical or mental health provider under this subdivision or paragraph (1) of subdivision (a) shall not be discontinued prior to completion of any reevaluation. Whether or not a reevaluation is obtained, if the board determines that payments to a provider shall be discontinued, the board shall notify the provider of their discontinuance within 30 days of its determination.

(j) The board may establish maximum rates and service limitations for reimbursement of medical and medical-related expenses, including counseling expenses, for which restitution is requested pursuant to this section. For mental health and counseling services, rates shall not exceed the statewide average. The adoption, amendment, and repeal of these maximum rates shall not be subject to the Administrative Procedure Act under Chapter 3.5 (commencing with Section 11340) of Part 1. An informational copy of the maximum rates shall be filed with the Secretary of State upon adoption by the board. A provider who accepts payment from the program for a service shall accept the program's rates as payment in full and shall not accept any payment on account of the service from any other source if the total of payments accepted would exceed the maximum rate set by the board for that service.

To assure service limitations which are uniform and appropriate to the levels of treatment required by the victim or derivative victim, the board may review all claims for these services as necessary to ensure their medical necessity. The board may further require additional documentation, information, or medical review of cases of continuing treatment which are projected to exceed five thousand dollars ($5,000) to determine the need to continue treatment in excess of that amount. The board may accept or reject claims for the amount in excess of five thousand dollars ($5,000) by applying the same standards applicable to processing the initial claim or may approve a continuing treatment regimen for a specific interval or subject to periodic review as appropriate. All information requested of the treating therapist shall be provided at no cost to the applicant, the board, or to local victim centers, pursuant to subdivision (b) of Section 13962. Requests for additional information shall be made in a timely manner so as not to interfere with necessary treatment.

(k) The authority provided by this section shall not be construed to in any way diminish, enhance, or otherwise affect any authority which the board may have under current law except as explicitly provided in this section.

(*l*) The board, in its discretion, may make payments directly to providers prior to verification.

(m) Notwithstanding paragraph (1) of subdivision (a), the board may reimburse a victim or derivative victim for mental health counseling in excess of that authorized by that paragraph if the claim is based on dire or exceptional circumstances that require more extensive treatment, as approved by the board.

(n) Notwithstanding paragraph (1) of subdivision (a), if, as of December 31, 1993, a person has incurred mental health counseling expenses pursuant to this article in excess of one-half of the amount specified in that subdivision, the board may award, in addition to amounts awarded for previously incurred expenses, an amount equal to not more than one-half of the applicable maximum amount specified in that paragraph or any additional amounts as the board determines is necessary.

(o) The limitations on the amounts which the board may reimburse for loss of support and loss of wages pursuant to paragraphs (2) and (3) of subdivision (a) shall not apply to victims or derivative victims whose claims for loss of wages and loss of support had been approved prior to January 1, 1994.

(p) This section shall become operative on January 1, 2003.

SEC. 6. (a) Section 2 of this bill incorporates amendments to Section 13960 of the Government Code proposed by both this bill and AB 645. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, but this bill becomes operative first, (2) each bill amends Section 13960 of the Government Code, (3) AB 1803 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 645, in which case Section 13960 of the Government Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of AB 645, at which time Section 2 of this bill shall become operative, and Sections 2.3 and 2.5 of this bill shall not become operative.

(b) Section 2.3 of this bill incorporates amendments to Section 13960 of the Government Code proposed by both this bill and AB 1803. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, but this bill becomes operative first, (2) each bill amends Section 13960 of the Government Code, (3) AB 645 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1803, in which case Section 13960 of the Government Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of AB 1803, at which time Section 2.3 of this bill shall become operative, and Sections 2 and 2.5 of this bill shall not become operative.

(c) Section 2.5 of this bill incorporates amendments to Section 13960 of the Government Code proposed by this bill, AB 645, and AB 1803. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1999, but this bill becomes operative first, (2) all three bills amend Section 13960 of the

Government Code, and (3) this bill is enacted after AB 645 and AB 1803, in which case Section 13960 of the Government Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of AB 645 and AB 1803, at which time Section 2.5 of this bill shall become operative, and Sections 2 and 2.3 of this bill shall not become operative.

SEC. 7. Section 4.5 of this bill incorporates amendments to Section 13964 of the Government Code proposed by both this bill and AB 645. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, but this bill becomes operative first, (2) each bill amends Section 13964 of the Government Code, and (3) this bill is enacted after AB 645, in which case Section 13964 of the Government Code, as amended by Section 4 of this bill, shall remain operative only until the operative date of AB 645, at which time Section 4.5 of this bill shall become operative.

SEC. 8. Section 5.5 of this bill incorporates amendments to Section 13965 of the Government Code proposed by both this bill and AB 645. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, but this bill becomes operative first, (2) each bill amends Section 13965 of the Government Code, and (3) this bill is enacted after AB 645, in which case Section 13965 of the Government Code, as amended by Section 5 of this bill, shall remain operative only until the operative date of AB 645, at which time Section 5.5 of this bill shall become operative.

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 that victims and derivative victims may receive needed assistance as quickly as possible, it is necessary that this act take effect immediately.

CHAPTER 698

An act to amend Sections 264.2 and 13701 of the Penal Code, relating to domestic violence.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 264.2 of the Penal Code is amended to read:

264.2. (a) Whenever there is an alleged violation of subdivision (e) of Section 243, or Section 261, 261.5, 262, 273.5, 286, 288a, or 289, the law enforcement officer assigned to the case shall immediately provide the victim of the crime with the "Victims of Domestic

Violence" card, as specified in subparagraph (G) of paragraph (9) of subdivision (c) of Section 13701 of the Penal Code.

(b) (1) The law enforcement officer, or his or her agency, shall immediately notify the local rape victim counseling center, whenever a victim of an alleged violation of Section 261, 261.5, 262, 286, 288a, or 289 is transported to a hospital for any medical evidentiary or physical examination. The victim shall have the right to have a sexual assault victim counselor, as defined in Section 1035.2 of the Evidence Code, and at least one other support person of the victim's choosing present at any medical evidentiary or physical examination.

(2) Prior to the commencement of any initial medical evidentiary or physical examination arising out of a sexual assault, a victim shall be notified orally or in writing by the attending medical provider that the victim has the right to have present a sexual assault victim counselor and at least one other support person of the victim's choosing.

(3) The hospital may verify with the law enforcement officer, or his or her agency, whether the local rape victim counseling center has been notified, upon the approval of the victim.

SEC. 1.5. Section 264.2 of the Penal Code is amended to read:

264.2. (a) Whenever there is an alleged violation or violations of subdivision (e) of Section 243, or Section 261, 261.5, 262, 273.5, 286, 288a, or 289, the law enforcement officer assigned to the case shall immediately provide the victim of the crime with the "Victims of Domestic Violence" card, as specified in subparagraph (G) of paragraph (9) of subdivision (c) of Section 13701 of the Penal Code.

(b) (1) The law enforcement officer, or his or her agency, shall immediately notify the local rape victim counseling center, whenever a victim of an alleged violation of Section 261, 261.5, 262, 286, 288a, or 289 is transported to a hospital for any medical evidentiary or physical examination. The victim shall have the right to have a sexual assault victim counselor, as defined in Section 1035.2 of the Evidence Code, and a support person of the victim's choosing present at any medical evidentiary or physical examination.

(2) Prior to the commencement of any initial medical evidentiary or physical examination arising out of a sexual assault, a victim shall be notified orally or in writing by the medical provider that the victim has the right to have present a sexual assault victim counselor and at least one other support person of the victim's choosing.

(3) The hospital may verify with the law enforcement officer, or his or her agency, whether the local rape victim counseling center has been notified, upon the approval of the victim.

(4) A support person may be excluded from a medical evidentiary or physical examination if the law enforcement officer or medical provider determines that the presence of that individual would be detrimental to the purpose of the examination.

SEC. 2. Section 13701 of the Penal Code is amended to read:

13701. (a) Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for officers' responses to domestic violence calls by January 1, 1986. These policies shall reflect that domestic violence is alleged criminal conduct. Further, they shall reflect existing policy that a request for assistance in a situation involving domestic violence is the same as any other request for assistance where violence has occurred.

(b) The written policies shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed. These policies also shall require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order issued under Chapter 4 (commencing with Section 2040) of Part 1 of Division 6, Division 10 (commencing with Section 6200), or Chapter 6 (commencing with Section 7700) of Part 3 of Division 12, of the Family Code, or Section 136.2 of this code, has been violated. These policies shall discourage, when appropriate, but not prohibit, dual arrests. Peace officers shall make reasonable efforts to identify the primary aggressor in any incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person acted in self-defense. These arrest policies shall be developed, adopted, and implemented by July 1, 1996. Notwithstanding subdivision (d), law enforcement agencies shall develop these policies with the input of local domestic violence agencies.

(c) These existing local policies and those developed shall be in writing and shall be available to the public upon request and shall include specific standards for the following:

(1) Felony arrests.

(2) Misdemeanor arrests.

(3) Use of citizen arrests.

(4) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.

(5) Verification and enforcement of stay-away orders.

(6) Cite and release policies.

(7) Emergency assistance to victims, such as medical care, transportation to a shelter, and police standbys for removing personal property.

(8) Assisting victims in pursuing criminal options, such as giving the victim the report number and directing the victim to the proper investigation unit.

(9) Furnishing written notice to victims at the scene, including, but not limited to, all of the following information:

(A) A statement informing the victim that despite official restraint of the person alleged to have committed domestic violence, the restrained person may be released at any time.

(B) A statement that, "For further information about a shelter you may contact _____."

(C) A statement that, "For information about other services in the community, where available, you may contact _____."

(D) A statement that, "For information about the California victims' compensation program, you may contact 1-800-777-9229."

(E) A statement informing the victim of domestic violence that he or she may ask the district attorney to file a criminal complaint.

(F) A statement informing the victim of the right to go to the superior court and file a petition requesting any of the following orders for relief:

(i) An order restraining the attacker from abusing the victim and other family members.

(ii) An order directing the attacker to leave the household.

(iii) An order preventing the attacker from entering the residence, school, business, or place of employment of the victim.

(iv) An order awarding the victim or the other parent custody of or visitation with a minor child or children.

(v) An order restraining the attacker from molesting or interfering with minor children in the custody of the victim.

(vi) An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so.

(vii) An order directing the defendant to make specified debit payments coming due while the order is in effect.

(viii) An order directing that either or both parties participate in counseling.

(G) A statement informing the victim of the right to file a civil suit for losses suffered as a result of the abuse, including medical expenses, loss of earnings, and other expenses for injuries sustained and damage to property, and any other related expenses incurred by the victim or any agency that shelters the victim.

(H) In the case of an alleged violation of subdivision (e) of Section 243 or Section 261, 261.5, 262, 273.5, 286, 288a, or 289, a "Victims of Domestic Violence" card which shall include, but is not limited to, the following information:

(i) The names and phone numbers of or local county hotlines for, or both the phone numbers of and local county hotlines for, local shelters for battered women and rape victim counseling centers within the county, including those centers specified in Section 13837, and their 24-hour counseling service telephone numbers.

(ii) A simple statement on the proper procedures for a victim to follow after a sexual assault.

(iii) A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.

(iv) A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime.

(10) Writing of reports.

(d) In the development of these policies and standards, each local department is encouraged to consult with domestic violence experts, such as the staff of the local shelter for battered women and their children. Departments may utilize the response guidelines developed by the commission in developing local policies.

SEC. 2.1. Section 13701 of the Penal Code is amended to read:

13701. (a) Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for officers' responses to domestic violence calls by January 1, 1986. These policies shall reflect that domestic violence is alleged criminal conduct. Further, they shall reflect existing policy that a request for assistance in a situation involving domestic violence is the same as any other request for assistance where violence has occurred.

(b) The written policies shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed. These policies also shall require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order issued under Chapter 4 (commencing with Section 2040) of Part 1 of Division 6, Division 10 (commencing with Section 6200), or Chapter 6 (commencing with Section 7700) of Part 3 of Division 12, of the Family Code, or Section 136.2 of this code, has been violated. These policies shall discourage, when appropriate, but not prohibit, dual arrests. Peace officers shall make reasonable efforts to identify the primary aggressor in any incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person acted in self-defense. These arrest policies shall be developed, adopted, and implemented by July 1, 1996. Notwithstanding subdivision (d), law enforcement agencies shall develop these policies with the input of local domestic violence agencies.

(c) These existing local policies and those developed shall be in writing and shall be available to the public upon request and shall include specific standards for the following:

(1) Felony arrests.

(2) Misdemeanor arrests.

(3) Use of citizen arrests.

(4) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.

(5) Verification and enforcement of stay-away orders.

(6) Cite and release policies.

(7) Emergency assistance to victims and children, such as medical care, transportation to a shelter or a hospital for treatment when necessary, and police standbys for removing personal property and assisting in safe passage out of the victim's residence.

(8) Assisting victims in pursuing criminal options, such as giving the victim the report number and directing the victim to the proper investigation unit.

(9) Furnishing written notice to victims at the scene, including, but not limited to, all of the following information:

(A) A statement informing the victim that despite official restraint of the person alleged to have committed domestic violence, the restrained person may be released at any time.

(B) A statement that, "For further information about a shelter you may contact _____."

(C) A statement that, "For information about other services in the community, where available, you may contact _____."

(D) A statement that, "For information about the California victims' compensation program, you may contact 1-800-777-9229."

(E) A statement informing the victim of domestic violence that he or she may ask the district attorney to file a criminal complaint.

(F) A statement informing the victim of the right to go to the superior court and file a petition requesting any of the following orders for relief:

(i) An order restraining the attacker from abusing the victim and other family members.

(ii) An order directing the attacker to leave the household.

(iii) An order preventing the attacker from entering the residence, school, business, or place of employment of the victim.

(iv) An order awarding the victim or the other parent custody of or visitation with a minor child or children.

(v) An order restraining the attacker from molesting or interfering with minor children in the custody of the victim.

(vi) An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so.

(vii) An order directing the defendant to make specified debit payments coming due while the order is in effect.

(viii) An order directing that either or both parties participate in counseling.

(G) A statement informing the victim of the right to file a civil suit for losses suffered as a result of the abuse, including medical expenses, loss of earnings, and other expenses for injuries sustained and damage to property, and any other related expenses incurred by the victim or any agency that shelters the victim.

(H) In the case of an alleged violation of subdivision (e) of Section 243 or Section 261, 261.5, 262, 273.5, 286, 288a, or 289, a "Victims of Domestic Violence" card which shall include, but is not limited to, the following information:

(i) The names and phone numbers of or local county hotlines for, or both the phone numbers of and local county hotlines for, local shelters for battered women and rape victim counseling centers within the county, including those centers specified in Section 13837, and their 24-hour counseling service telephone numbers.

(ii) A simple statement on the proper procedures for a victim to follow after a sexual assault.

(iii) A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.

(iv) A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime.

(10) Writing of reports.

(d) In the development of these policies and standards, each local department is encouraged to consult with domestic violence experts, such as the staff of the local shelter for battered women and their children. Departments may utilize the response guidelines developed by the commission in developing local policies.

SEC. 2.2. Section 13701 of the Penal Code is amended to read:

13701. (a) Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for officers' responses to domestic violence calls by January 1, 1986. These policies shall reflect that domestic violence is alleged criminal conduct. Further, they shall reflect existing policy that a request for assistance in a situation involving domestic violence is the same as any other request for assistance where violence has occurred.

(b) The written policies shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed. These policies also shall require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order issued under Chapter 4 (commencing with Section 2040) of Part 1 of Division 6, Division 10 (commencing with Section 6200), or Chapter 6 (commencing with Section 7700) of Part 3 of Division 12, of the Family Code, or Section 136.2 of this code, or any other state, tribe, or territory, has been violated. These policies shall discourage, when appropriate, but not prohibit, dual arrests. Peace officers shall make reasonable efforts to identify the primary aggressor in any incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person acted in self-defense. These arrest policies shall be developed, adopted, and implemented by July 1, 1996. Notwithstanding subdivision (d), law enforcement agencies shall

develop these policies with the input of local domestic violence agencies.

(c) These existing local policies and those developed shall be in writing and shall be available to the public upon request and shall include specific standards for the following:

(1) Felony arrests.

(2) Misdemeanor arrests.

(3) Use of citizen arrests.

(4) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.

(5) Verification and enforcement of stay-away orders.

(6) Cite and release policies.

(7) Emergency assistance to victims, such as medical care, transportation to a shelter, and police standbys for removing personal property.

(8) Assisting victims in pursuing criminal options, such as giving the victim the report number and directing the victim to the proper investigation unit.

(9) Furnishing written notice to victims at the scene, including, but not limited to, all of the following information:

(A) A statement informing the victim that despite official restraint of the person alleged to have committed domestic violence, the restrained person may be released at any time.

(B) A statement that, "For further information about a shelter you may contact _____."

(C) A statement that, "For information about other services in the community, where available, you may contact _____."

(D) A statement that, "For information about the California victims' compensation program, you may contact 1-800-777-9229."

(E) A statement informing the victim of domestic violence that he or she may ask the district attorney to file a criminal complaint.

(F) A statement informing the victim of the right to go to the superior court and file a petition requesting any of the following orders for relief:

(i) An order restraining the attacker from abusing the victim and other family members.

(ii) An order directing the attacker to leave the household.

(iii) An order preventing the attacker from entering the residence, school, business, or place of employment of the victim.

(iv) An order awarding the victim or the other parent custody of or visitation with a minor child or children.

(v) An order restraining the attacker from molesting or interfering with minor children in the custody of the victim.

(vi) An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so.

(vii) An order directing the defendant to make specified debit payments coming due while the order is in effect.

(viii) An order directing that either or both parties participate in counseling.

(G) A statement informing the victim of the right to file a civil suit for losses suffered as a result of the abuse, including medical expenses, loss of earnings, and other expenses for injuries sustained and damage to property, and any other related expenses incurred by the victim or any agency that shelters the victim.

(H) In the case of an alleged violation of subdivision (e) of Section 243 or Section 261, 261.5, 262, 273.5, 286, 288a, or 289, a "Victims of Domestic Violence" card which shall include, but is not limited to, the following information:

(i) The names and phone numbers of or local county hotlines for, or both the phone numbers of and local county hotlines for, local shelters for battered women and rape victim counseling centers within the county, including those centers specified in Section 13837, and their 24-hour counseling service telephone numbers.

(ii) A simple statement on the proper procedures for a victim to follow after a sexual assault.

(iii) A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.

(iv) A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime.

(10) Writing of reports.

(d) In the development of these policies and standards, each local department is encouraged to consult with domestic violence experts, such as the staff of the local shelter for battered women and their children. Departments may utilize the response guidelines developed by the commission in developing local policies.

SEC. 2.3. Section 13701 of the Penal Code is amended to read:

13701. (a) Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for officers' responses to domestic violence calls by January 1, 1986. These policies shall reflect that domestic violence is alleged criminal conduct. Further, they shall reflect existing policy that a request for assistance in a situation involving domestic violence is the same as any other request for assistance where violence has occurred.

(b) The written policies shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed. These policies also shall require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order issued under Chapter 4 (commencing with Section 2040) of Part 1 of Division 6, Division 10 (commencing with Section 6200), or Chapter 6 (commencing with Section 7700) of Part 3 of Division 12, of the Family Code, or Section 136.2 of this code, or any other state, tribe, or territory, has been violated. These policies shall discourage, when appropriate, but not prohibit, dual arrests. Peace

officers shall make reasonable efforts to identify the primary aggressor in any incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person acted in self-defense. These arrest policies shall be developed, adopted, and implemented by July 1, 1996. Notwithstanding subdivision (d), law enforcement agencies shall develop these policies with the input of local domestic violence agencies.

(c) These existing local policies and those developed shall be in writing and shall be available to the public upon request and shall include specific standards for the following:

(1) Felony arrests.

(2) Misdemeanor arrests.

(3) Use of citizen arrests.

(4) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.

(5) Verification and enforcement of stay-away orders.

(6) Cite and release policies.

(7) Emergency assistance to victims and children, such as medical care, transportation to a shelter or a hospital for treatment when necessary, and police standbys for removing personal property and assisting in safe passage out of the victim's residence.

(8) Assisting victims in pursuing criminal options, such as giving the victim the report number and directing the victim to the proper investigation unit.

(9) Furnishing written notice to victims at the scene, including, but not limited to, all of the following information:

(A) A statement informing the victim that despite official restraint of the person alleged to have committed domestic violence, the restrained person may be released at any time.

(B) A statement that, "For further information about a shelter you may contact _____."

(C) A statement that, "For information about other services in the community, where available, you may contact _____."

(D) A statement that, "For information about the California victims' compensation program, you may contact 1-800-777-9229."

(E) A statement informing the victim of domestic violence that he or she may ask the district attorney to file a criminal complaint.

(F) A statement informing the victim of the right to go to the superior court and file a petition requesting any of the following orders for relief:

(i) An order restraining the attacker from abusing the victim and other family members.

(ii) An order directing the attacker to leave the household.

(iii) An order preventing the attacker from entering the residence, school, business, or place of employment of the victim.

(iv) An order awarding the victim or the other parent custody of or visitation with a minor child or children.

(v) An order restraining the attacker from molesting or interfering with minor children in the custody of the victim.

(vi) An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so.

(vii) An order directing the defendant to make specified debit payments coming due while the order is in effect.

(viii) An order directing that either or both parties participate in counseling.

(G) A statement informing the victim of the right to file a civil suit for losses suffered as a result of the abuse, including medical expenses, loss of earnings, and other expenses for injuries sustained and damage to property, and any other related expenses incurred by the victim or any agency that shelters the victim.

(H) In the case of an alleged violation of subdivision (e) of Section 243 or Section 261, 261.5, 262, 273.5, 286, 288a, or 289, a "Victims of Domestic Violence" card which shall include, but is not limited to, the following information:

(i) The names and phone numbers of or local county hotlines for, or both the phone numbers of and local county hotlines for, local shelters for battered women and rape victim counseling centers within the county, including those centers specified in Section 13837, and their 24-hour counseling service telephone numbers.

(ii) A simple statement on the proper procedures for a victim to follow after a sexual assault.

(iii) A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.

(iv) A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime.

(10) Writing of reports.

(d) In the development of these policies and standards, each local department is encouraged to consult with domestic violence experts, such as the staff of the local shelter for battered women and their children. Departments may utilize the response guidelines developed by the commission in developing local policies.

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. Section 1.5 of this bill incorporates amendments to Section 264.2 of the Penal Code proposed by both this bill and AB 1115. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 264.2 of the Penal Code, and (3) this bill is enacted after AB 1115, in which case Section 1 of this bill shall not become operative.

SEC. 5. (a) Section 2.1 of this bill incorporates amendments to Section 13701 of the Penal Code proposed by both this bill and AB 2172. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 13701 of the Penal Code, (3) AB 2177 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2172, 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 13701 of the Penal Code proposed by both this bill and AB 2177. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 13701 of the Penal Code, (3) AB 2172 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2177, 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 13701 of the Penal Code proposed by this bill, AB 2172, and AB 2177. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1999, (2) all three bills amend Section 13701 of the Penal Code, and (3) this bill is enacted after AB 2172 and AB 2177, in which case Sections 2, 2.1, and 2.2 of this bill shall not become operative.

CHAPTER 699

An act to amend Sections 243 and 836 of the Penal Code, relating to domestic violence.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 243 of the Penal Code is amended to read:

243. (a) A battery is punishable by a fine of not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail not exceeding six months, or by both the fine and imprisonment.

(b) When a battery is committed against the person of a peace officer, custodial officer, firefighter, emergency medical technician, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, whether on or off duty, including when the peace officer is in a police uniform and is concurrently performing the duties required of him or her as a peace officer while also employed in a private capacity as a part-time or casual private security guard or patrolman, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that the victim is a peace officer, custodial officer, firefighter, emergency medical technician, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care, the battery is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment.

(c) (1) When a battery is committed against a custodial officer, firefighter, emergency medical technician, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, whether on or off duty or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that the victim is a custodial officer, firefighter, emergency medical technician, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care, and an injury is inflicted on that victim, the battery is punishable by a fine of not more than two thousand dollars ($2,000), by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment, or by imprisonment in the state prison for 16 months, or two or three years.

(2) When the battery specified in paragraph (1) is committed against a peace officer engaged in the performance of his or her duties, whether on or off duty, including when the peace officer is in a police uniform and is concurrently performing the duties required of him or her as a peace officer while also employed in a private capacity as a part-time or casual private security guard or patrolman and the person committing the offense knows or reasonably should know that the victim is a peace officer engaged in the performance of his or her duties, the battery is punishable by a fine of not more than ten thousand dollars ($10,000), or by imprisonment in a county jail not exceeding one year or in the state prison for 16 months, or two or three years, or by both that fine and imprisonment.

(d) When a battery is committed against any person and serious bodily injury is inflicted on the person, the battery is punishable by imprisonment in a county jail not exceeding one year or imprisonment in the state prison for two, three, or four years.

(e) (1) When a battery is committed against a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant's child, former spouse, fiancé, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship, the battery is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail for a period of not more than one year, or by both. If probation is granted, or the execution or imposition of the sentence is suspended, it shall be a condition thereof that the defendant participate in, for no less than one year, and successfully complete, a batterer's treatment program, as defined in Section 1203.097, or if none is available, another appropriate counseling program designated by the court. However, this provision shall not be construed as requiring a city, a county, or a city and county to provide a new program or higher level of service as contemplated by Section 6 of Article XIII B of the California Constitution.

(2) Upon conviction of a violation of this subdivision, if probation is granted, the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(A) That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars ($5,000).

(B) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation

of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

(3) Upon conviction of a violation of this subdivision, if probation is granted or the execution or imposition of the sentence is suspended and the person has been previously convicted of a violation of this subdivision and sentenced under paragraph (1), the person shall be imprisoned for not less than 48 hours in addition to the conditions in paragraph (1). However, the court, upon a showing of good cause, may elect not to impose the mandatory minimum imprisonment as required by this subdivision and may, under these circumstances, grant probation or order the suspension of the execution or imposition of the sentence.

The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence so as to display society's condemnation for these crimes of violence upon victims with whom a close relationship has been formed.

(f) As used in this section:

(1) "Peace officer" means any person defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) "Emergency medical technician" means a person who is either an EMT-I, EMT-II, or EMT-P (paramedic), and possesses a valid certificate or license in accordance with the standards of Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(3) "Nurse" means a person who meets the standards of Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(4) "Serious bodily injury" means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

(5) "Injury" means any physical injury which requires professional medical treatment.

(6) "Custodial officer" means any person who has the responsibilities and duties described in Section 831 and who is employed by a law enforcement agency of any city or county or who performs those duties as a volunteer.

(7) "Lifeguard" means a person defined in paragraph (5) of subdivision (c) of Section 241.

(8) "Traffic officer" means any person employed by a city, county, or city and county, to monitor and enforce state laws and local ordinances relating to parking and the operation of vehicles.

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

(10) "Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement independent of financial considerations.

(g) It is the intent of the Legislature by amendments to this section at the 1981–82 and 1983–84 Regular Sessions to abrogate the holdings in cases such as People v. Corey, 21 Cal. 3d 738, and Cervantez v. J.C. Penney Co., 24 Cal. 3d 579, and to reinstate prior judicial interpretations of this section as they relate to criminal sanctions for battery on peace officers who are employed, on a part-time or casual basis, while wearing a police uniform as private security guards or patrolmen and to allow the exercise of peace officer powers concurrently with that employment.

SEC. 2. Section 836 of the Penal Code is amended to read:

836. (a) A peace officer may arrest a person in obedience to a warrant, or, pursuant to the authority granted to him or her by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, without a warrant, may arrest a person whenever any of the following circumstances occur:

(1) The officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence.

(2) The person arrested has committed a felony, although not in the officer's presence.

(3) The officer has probable cause to believe that the person to be arrested has committed a felony, whether or not a felony, in fact, has been committed.

(b) Any time a peace officer is called out on a domestic call, it shall be mandatory that the officer make a good faith effort to inform the victim of his or her right to make a citizen's arrest. This information shall include advising the victim how to safely execute the arrest.

(c) (1) When a peace officer is responding to a call alleging a violation of a domestic violence protective or restraining order issued under the Family Code, Section 527.6 of the Code of Civil Procedure, Section 213.5 of the Welfare and Institutions Code, or Section 136.2 of this code, or of a domestic violence protective or restraining order issued by the court of another state, tribe, or territory and the peace officer has probable cause to believe that the person against whom the order is issued has notice of the order and has committed an act in violation of the order, the officer may arrest the person without a warrant and take that person into custody whether or not the violation occurred in the presence of the arresting officer. The officer shall, as soon as possible after the arrest, confirm with the appropriate authorities or the Domestic Violence Protection Order Registry maintained pursuant to Section 6380 of the Family Code that a true copy of the protective order has been registered, unless the victim provides the officer with a copy of the protective order.

(2) The person against whom a protective order has been issued shall be deemed to have notice of the order if the victim presents to the officer proof of service of the order, the officer confirms with the appropriate authorities that a true copy of the proof of service is on file, or the person against whom the protective order was issued was present at the protective order hearing or was informed by a peace officer of the contents of the protective order.

(3) In situations where mutual protective orders have been issued under Division 10 (commencing with Section 6200) of the Family Code, liability for arrest under this subdivision applies only to those persons who are reasonably believed to have been the primary aggressor. In those situations, prior to making an arrest under this subdivision, the peace officer shall make reasonable efforts to identify, and may arrest, the primary aggressor involved in the incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider (A) the intent of the law to protect victims of domestic violence from continuing abuse, (B) the threats creating fear of physical injury, (C) the history of domestic violence between the persons involved, and (D) whether either person involved acted in self-defense.

(d) Notwithstanding paragraph (1) of subdivision (a), if a person commits an assault or battery upon his or her spouse or former spouse, fiancé, fiancée, a person with whom he or she is cohabiting, a person with whom the defendant currently has, or has previously had, an engagement relationship, or a person who is the parent of his or her child, a peace officer may arrest the person without a warrant where both of the following circumstances apply:

(1) The peace officer has probable cause to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(2) The peace officer makes the arrest as soon as probable cause arises to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

SEC. 2.1. Section 836 of the Penal Code is amended to read:

836. (a) A peace officer may arrest a person in obedience to a warrant, or, pursuant to the authority granted to him or her by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, without a warrant, may arrest a person whenever any of the following circumstances occur:

(1) The officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence.

(2) The person arrested has committed a felony, although not in the officer's presence.

(3) The officer has probable cause to believe that the person to be arrested has committed a felony, whether or not a felony, in fact, has been committed.

(b) Any time a peace officer is called out on a domestic call, it shall be mandatory that the officer make a good faith effort to inform the victim of his or her right to make a citizen's arrest. This information shall include advising the victim how to safely execute the arrest.

(c) (1) When a peace officer is responding to a call alleging a violation of a domestic violence protective or restraining order issued under the Family Code, Section 527.6 of the Code of Civil Procedure, Section 213.5 of the Welfare and Institutions Code, or Section 136.2 of this code, or of a domestic violence protective or restraining order issued by the court of another state, tribe, or territory and the peace officer has probable cause to believe that the person against whom the order is issued has notice of the order and has committed an act in violation of the order, the officer may arrest the person without a warrant and take that person into custody whether or not the violation occurred in the presence of the arresting officer. The officer shall, as soon as possible after the arrest, confirm with the appropriate authorities or the Domestic Violence Protection Order Registry maintained pursuant to Section 6380 of the Family Code that a true copy of the protective order has been registered, unless the victim provides the officer with a copy of the protective order.

(2) The person against whom a protective order has been issued shall be deemed to have notice of the order if the victim presents to the officer proof of service of the order, the officer confirms with the appropriate authorities that a true copy of the proof of service is on file, or the person against whom the protective order was issued was present at the protective order hearing or was informed by a peace officer of the contents of the protective order.

(3) In situations where mutual protective orders have been issued under Division 10 (commencing with Section 6200) of the Family Code, liability for arrest under this subdivision applies only to those persons who are reasonably believed to have been the primary aggressor. In those situations, prior to making an arrest under this subdivision, the peace officer shall make reasonable efforts to identify, and may arrest, the primary aggressor involved in the incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider (A) the intent of the law to protect victims of domestic violence from continuing abuse, (B) the threats creating fear of physical injury, (C) the history of domestic violence between the persons involved, and (D) whether either person involved acted in self-defense.

(d) Notwithstanding paragraph (1) of subdivision (a), if a person commits an assault or battery upon his or her spouse or former spouse, fiancé, fiancée, a person with whom he or she is cohabiting, a person with whom the defendant currently has, or has previously had, an engagement relationship, or a person who is the parent of his or her child, a peace officer may arrest the person without a warrant where both of the following circumstances apply:

(1) The peace officer has probable cause to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(2) The peace officer makes the arrest as soon as probable cause arises to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(e) In addition to the authority to make an arrest without a warrant pursuant to paragraphs (1) and (3) of subdivision (a), a peace officer may, without a warrant, arrest a person for a violation of Section 12025 when all of the following apply:

(1) The officer has reasonable cause to believe that the person to be arrested has committed the violation of Section 12025.

(2) The violation of Section 12025 occurred within an airport, as defined in Section 21013 of the Public Utilities Code, in an area to which access is controlled by the inspection of persons and property.

(3) The peace officer makes the arrest as soon as reasonable cause arises to believe that the person to be arrested has committed the violation of Section 12025.

SEC. 2.2. Section 836 of the Penal Code is amended to read:

836. (a) A peace officer may arrest a person in obedience to a warrant, or, pursuant to the authority granted to him or her by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, without a warrant, may arrest a person whenever any of the following circumstances occur:

(1) The officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence.

(2) The person arrested has committed a felony, although not in the officer's presence.

(3) The officer has probable cause to believe that the person to be arrested has committed a felony, whether or not a felony, in fact, has been committed.

(b) Any time a peace officer is called out on a domestic call, it shall be mandatory that the officer make a good faith effort to inform the victim of his or her right to make a citizen's arrest. This information shall include advising the victim how to safely execute the arrest.

(c) (1) When a peace officer is responding to a call alleging a violation of a domestic violence protective or restraining order issued under the Family Code, Section 527.6 of the Code of Civil Procedure, Section 213.5 of the Welfare and Institutions Code, Section 136.2 of this code, or paragraph (2) of subdivision (a) of Section 1203.097 of this code, or of a domestic violence protective or restraining order issued by the court of another state, tribe, or territory and the peace officer has probable cause to believe that the person against whom the order is issued has notice of the order and has committed an act in violation of the order, the officer may arrest the person without a warrant and take that person into custody whether or not the violation occurred in the presence of the arresting officer. The officer shall, as soon as possible after the arrest, confirm with the appropriate

authorities or the Domestic Violence Protection Order Registry maintained pursuant to Section 6380 of the Family Code that a true copy of the protective order has been registered, unless the victim provides the officer with a copy of the protective order.

(2) The person against whom a protective order has been issued shall be deemed to have notice of the order if the victim presents to the officer proof of service of the order, the officer confirms with the appropriate authorities that a true copy of the proof of service is on file, or the person against whom the protective order was issued was present at the protective order hearing or was informed by a peace officer of the contents of the protective order.

(3) In situations where mutual protective orders have been issued under Division 10 (commencing with Section 6200) of the Family Code, liability for arrest under this subdivision applies only to those persons who are reasonably believed to have been the primary aggressor. In those situations, prior to making an arrest under this subdivision, the peace officer shall make reasonable efforts to identify, and may arrest, the primary aggressor involved in the incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider (A) the intent of the law to protect victims of domestic violence from continuing abuse, (B) the threats creating fear of physical injury, (C) the history of domestic violence between the persons involved, and (D) whether either person involved acted in self-defense.

(d) Notwithstanding paragraph (1) of subdivision (a), if a suspect commits an assault or battery upon a current or former spouse, fiancé, fiancée, a current or former cohabitant as defined in Section 6209 of the Family Code, a person with whom the suspect currently is having or has previously had an engagement relationship, a person with whom the suspect has parented a child, or is presumed to have parented a child pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code), a child of the suspect, a child whose parentage by the suspect is the subject of an action under the Uniform Parentage Act, a child of a person in one of the above categories, or any other person related to the suspect by consanguinity or affinity within the second degree, a peace officer may arrest the suspect without a warrant where both of the following circumstances apply:

(1) The peace officer has probable cause to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(2) The peace officer makes the arrest as soon as probable cause arises to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

SEC. 2.3. Section 836 of the Penal Code is amended to read:

836. (a) A peace officer may arrest a person in obedience to a warrant, or, pursuant to the authority granted to him or her by

Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, without a warrant, may arrest a person whenever any of the following circumstances occur:

(1) The officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence.

(2) The person arrested has committed a felony, although not in the officer's presence.

(3) The officer has probable cause to believe that the person to be arrested has committed a felony, whether or not a felony, in fact, has been committed.

(b) Any time a peace officer is called out on a domestic call, it shall be mandatory that the officer make a good faith effort to inform the victim of his or her right to make a citizen's arrest. This information shall include advising the victim how to safely execute the arrest.

(c) (1) When a peace officer is responding to a call alleging a violation of a domestic violence protective or restraining order issued under the Family Code, Section 527.6 of the Code of Civil Procedure, Section 213.5 of the Welfare and Institutions Code, Section 136.2 of this code, or paragraph (2) of subdivision (a) of Section 1203.097 of this code, or of a domestic violence protective or restraining order issued by the court of another state, tribe, or territory and the peace officer has probable cause to believe that the person against whom the order is issued has notice of the order and has committed an act in violation of the order, the officer may arrest the person without a warrant and take that person into custody whether or not the violation occurred in the presence of the arresting officer. The officer shall, as soon as possible after the arrest, confirm with the appropriate authorities or the Domestic Violence Protection Order Registry maintained pursuant to Section 6380 of the Family Code that a true copy of the protective order has been registered, unless the victim provides the officer with a copy of the protective order.

(2) The person against whom a protective order has been issued shall be deemed to have notice of the order if the victim presents to the officer proof of service of the order, the officer confirms with the appropriate authorities that a true copy of the proof of service is on file, or the person against whom the protective order was issued was present at the protective order hearing or was informed by a peace officer of the contents of the protective order.

(3) In situations where mutual protective orders have been issued under Division 10 (commencing with Section 6200) of the Family Code, liability for arrest under this subdivision applies only to those persons who are reasonably believed to have been the primary aggressor. In those situations, prior to making an arrest under this subdivision, the peace officer shall make reasonable efforts to identify, and may arrest, the primary aggressor involved in the incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider (A) the intent of the law

to protect victims of domestic violence from continuing abuse, (B) the threats creating fear of physical injury, (C) the history of domestic violence between the persons involved, and (D) whether either person involved acted in self-defense.

(d) Notwithstanding paragraph (1) of subdivision (a), if a suspect commits an assault or battery upon a current or former spouse, fiancé, fiancée, a current or former cohabitant as defined in Section 6209 of the Family Code, a person with whom the suspect currently is having or has previously had an engagement relationship, a person with whom the suspect has parented a child, or is presumed to have parented a child pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code), a child of the suspect, a child whose parentage by the suspect is the subject of an action under the Uniform Parentage Act, a child of a person in one of the above categories, or any other person related to the suspect by consanguinity or affinity within the second degree, a peace officer may arrest the suspect without a warrant where both of the following circumstances apply:

(1) The peace officer has probable cause to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(2) The peace officer makes the arrest as soon as probable cause arises to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(e) In addition to the authority to make an arrest without a warrant pursuant to paragraphs (1) and (3) of subdivision (a), a peace officer may, without a warrant, arrest a person for a violation of Section 12025 when all of the following apply:

(1) The officer has reasonable cause to believe that the person to be arrested has committed the violation of Section 12025.

(2) The violation of Section 12025 occurred within an airport, as defined in Section 21013 of the Public Utilities Code, in an area to which access is controlled by the inspection of persons and property.

(3) The peace officer makes the arrest as soon as reasonable cause arises to believe that the person to be arrested has committed the violation of Section 12025.

SEC. 3. (a) Section 2.1 of this bill incorporates amendments to Section 836 of the Penal Code proposed by both this bill and AB 247. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 836 of the Penal Code, and (3) SB 1470 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 247, 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 836 of the Penal Code proposed by both this bill and SB 1470. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 836 of the

Penal Code, (3) AB 247 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1470, 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 836 of the Penal Code proposed by this bill, AB 247, and SB 1470. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1999, (2) all three bills amend Section 836 of the Penal Code, and (3) this bill is enacted after AB 247 and SB 1470, in which case Sections 2, 2.1, and 2.2 of this bill shall not become operative.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 700

An act to amend, repeal, and add Section 13960 of the Government Code, relating to crime victims, and making an appropriation therefor.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 13960 of the Government Code is amended to read:

13960. As used in this article:

(a) (1) "Victim" means a resident of the State of California, a member of the military stationed in California, or a family member living with a member of the military stationed in California who sustains injury or death as a direct result of a crime.

(2) "Derivative victim" means a resident of California who is one of the following:

(A) At the time of the crime was the parent, sibling, spouse, or child of the victim.

(B) At the time of the crime was living in the household of the victim.

(C) A person who had previously lived in the household of the victim for a period of not less than two years in a relationship substantially similar to a relationship listed in subparagraph (A).

(D) Is another family member of the victim, including the victim's fiancé or fiancée, and witnessed the crime.

(b) (1) "Injury" includes physical or emotional injury, or both. However, this article does not apply to emotional injury unless that injury is incurred by a victim who also sustains physical injury or threat of physical injury. For purposes of this article, a victim of a crime committed in violation of Section 261, 262, 271, 273a, 273d, 278, 278.5, 285, 286, 288, 288a, 288.5, or 289, or subdivision (b) or (c) of Section 311.4, of the Penal Code, who sustains emotional injury is presumed to have sustained physical injury. For purposes of this article, a victim of a crime committed in violation of Section 270 of the Penal Code, as a result of conduct other than a failure to pay child support, who sustains emotional injury is presumed to have sustained physical injury if criminal charges were filed or a prosecuting attorney expresses the opinion that the child is a victim of that section.

(2) It is the intent of the Legislature that in order for the presumption set forth in paragraph (1) relating to a violation of Section 278 or 278.5 of the Penal Code to apply, the deprivation of custody as described in those sections shall have endured for not less than 30 days. For the purposes of this paragraph, the child, and not the nonoffending parent or other caretaker, shall be deemed the victim.

(3) A child who has been the witness of a crime or crimes of domestic violence may be presumed by the board to have sustained physical injury.

(c) "Crime" means a crime or public offense that would constitute a misdemeanor or a felony if committed in California by a competent adult which results in injury to a resident of this state, including a crime or public offense, wherever it may take place, when the resident is temporarily absent from the state. "Crime" includes an act of terrorism, as defined in Section 2331 of Title 18 of the United States Code, committed against a resident of the state, whether or not the act occurs within the state. No act involving the operation of a motor vehicle, aircraft, or water vehicle which results in injury or death constitutes a crime for the purposes of this article, except that a crime shall include any of the following:

(1) Injury or death intentionally inflicted through the use of a motor vehicle, aircraft, or water vehicle.

(2) Injury or death caused by a driver in violation of Section 20001 of the Vehicle Code.

(3) Injury or death caused by a person who is under the influence of any alcoholic beverage or drug.

(4) Injury or death caused by a driver of a motor vehicle in the immediate act of fleeing the scene of a crime in which he or she knowingly and willingly participated.

For the purpose of the limitations imposed by this article, a crime shall mean one act or series of related acts arising from the same course of conduct with the same perpetrator or perpetrators.

(d) "Pecuniary loss" means the following expenses for which the victim or derivative victim has not been and will not be reimbursed from any other source:

(1) The amount of medical or medical-related expenses incurred by the victim, including inpatient psychological or psychiatric expenses, and including, but not limited to, eyeglasses, hearing aids, dentures, or any prosthetic device taken, lost, or destroyed during the commission of the crime, or the use of which became necessary as a direct result of the crime.

(2) The amount of outpatient psychiatric, psychological, or other mental health counseling related expenses which became necessary as a direct result of the crime. These counseling services may only be reimbursed if provided by any of the following individuals:

(A) A person licensed as a physician who is certified in psychiatry by the American Board of Psychiatry and Neurology or who has completed a residency in psychiatry.

(B) A person licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(C) A person licensed as a clinical social worker under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code.

(D) A person licensed as a marriage, family, and child counselor under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(E) A person registered as a psychological assistant who is under the supervision of a licensed psychologist or board certified psychiatrist as required by Section 2913 of the Business and Professions Code.

(F) A person registered with the Board of Psychology who is providing services in a nonprofit community agency pursuant to subdivision (d) of Section 2909 of the Business and Professions Code.

(G) A person registered as a marriage, family, and child counselor intern who is under the supervision of a licensed marriage, family, and child counselor, a licensed clinical social worker, a licensed psychologist, or a licensed physician certified in psychiatry, as specified in Section 4980.44 of the Business and Professions Code.

(H) A person registered as an associate clinical social worker, as defined in Section 4996.18 of the Business and Professions Code, who is under the supervision of a licensed clinical social worker, a licensed psychologist, or a board certified psychiatrist.

(3) The loss of income that the victim or the loss of support that the derivative victim has incurred or will incur as a direct result of an injury or death.

(4) Pecuniary loss also includes nonmedical remedial care and treatment rendered in accordance with a religious method of healing recognized by state law.

(5) The amount of family psychiatric, psychological, or mental health counseling expenses necessary as a direct result of the crime for the successful treatment of the victim, provided to family members of the victim in the presence of the victim, whether or not the family member relationship existed at the time of the crime.

(e) "Board" means the State Board of Control.

(f) "Victim centers" means those centers as specified in Section 13835.2 of the Penal Code.

(g) "Peer counselor" means a provider of mental health counseling services who has completed a specialized course in rape crisis counseling skills development, participates in continuing education in rape crisis counseling skills development, and provides rape crisis counseling in consultation with a mental health practitioner licensed within the State of California.

(h) 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 13960 of the Government Code is amended to read:

13960. As used in this article:

(a) (1) "Victim" means a resident of the State of California, a member of the military stationed in California, or a family member living with a member of the military stationed in California who sustains injury or death as a direct result of a crime.

(2) "Derivative victim" means a resident of California, or resident of another state, who is one of the following:

(A) At the time of the crime was the parent, sibling, spouse, or child of the victim.

(B) At the time of the crime was living in the household of the victim.

(C) A person who had previously lived in the household of the victim for a period of not less than two years in a relationship substantially similar to a relationship listed in subparagraph (A).

(D) Is another family member of the victim, including the victim's fiancé or fiancée, and witnessed the crime.

(b) (1) "Injury" includes physical or emotional injury, or both. However, this article does not apply to emotional injury unless that injury is incurred by a victim who also sustains physical injury or threat of physical injury. For purposes of this article, a victim of a crime committed in violation of Section 261, 262, 271, 273a, 273d, 278, 278.5, 285, 286, 288, 288a, 288.5, or 289, or subdivision (b) or (c) of Section 311.4, of the Penal Code, who sustains emotional injury is

presumed to have sustained physical injury. For purposes of this article, a victim of a crime committed in violation of Section 270 of the Penal Code, as a result of conduct other than a failure to pay child support, who sustains emotional injury is presumed to have sustained physical injury if criminal charges were filed. For purposes of this article, a victim of a crime committed in violation of subdivision (d) of Section 261.5 of the Penal Code, who sustains emotional injury, is presumed to have sustained physical injury if felony charges were filed.

(2) It is the intent of the Legislature that in order for the presumption set forth in paragraph (1) relating to a violation of Section 278 or 278.5 of the Penal Code to apply, the deprivation of custody as described in those sections shall have endured for not less than 30 days. For the purposes of this paragraph, the child, and not the nonoffending parent or other caretaker, shall be deemed the victim.

(3) A child who has been the witness of a crime or crimes of domestic violence may be presumed by the board to have sustained physical injury.

(c) "Crime" means a crime or public offense that would constitute a misdemeanor or a felony if committed in California by a competent adult which results in injury to a resident of this state, including a crime or public offense, wherever it may take place, when the resident is temporarily absent from the state. "Crime" includes an act of terrorism, as defined in Section 2331 of Title 18 of the United States Code, committed against a resident of the state, whether or not the act occurs within the state. No act involving the operation of a motor vehicle, aircraft, or water vehicle that results in injury or death constitutes a crime for the purposes of this article, except that a crime shall include any of the following:

(1) Injury or death intentionally inflicted through the use of a motor vehicle, aircraft, or water vehicle.

(2) Injury or death caused by a driver in violation of Section 20001 of the Vehicle Code.

(3) Injury or death caused by a person who is under the influence of any alcoholic beverage or drug.

(4) Injury or death caused by a driver of a motor vehicle in the immediate act of fleeing the scene of a crime in which he or she knowingly and willingly participated.

(5) Injury or death caused by a person in violation of subdivision (c) of Section 192 or Section 192.5 of the Penal Code.

For the purpose of the limitations imposed by this article, a crime shall mean one act or series of related acts arising from the same course of conduct with the same perpetrator or perpetrators.

(d) "Pecuniary loss" means the following expenses for which the victim or derivative victim has not been and will not be reimbursed from any other source:

(1) The amount of medical or medical-related expenses incurred by the victim, including inpatient psychological or psychiatric expenses, and including, but not limited to, eyeglasses, hearing aids, dentures, or any prosthetic device taken, lost, or destroyed during the commission of the crime, or the use of which became necessary as a direct result of the crime.

(2) The amount of outpatient psychiatric, psychological, or other mental health counseling related expenses that became necessary as a direct result of the crime. These counseling services may only be reimbursed if provided by any of the following individuals:

(A) A person licensed as a physician who is certified in psychiatry by the American Board of Psychiatry and Neurology or who has completed a residency in psychiatry.

(B) A person licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(C) A person licensed as a clinical social worker under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code.

(D) A person licensed as a marriage, family, and child counselor under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(E) A person registered as a psychological assistant who is under the supervision of a licensed psychologist or board certified psychiatrist as required by Section 2913 of the Business and Professions Code.

(F) A person registered with the Board of Psychology who is providing services in a nonprofit community agency pursuant to subdivision (d) of Section 2909 of the Business and Professions Code.

(G) A person registered as a marriage, family, and child counselor intern who is under the supervision of a licensed marriage, family, and child counselor, a licensed clinical social worker, a licensed psychologist, or a licensed physician certified in psychiatry, as specified in Section 4980.44 of the Business and Professions Code.

(H) A person registered as an associate clinical social worker, as defined in Section 4996.18 of the Business and Professions Code, who is under the supervision of a licensed clinical social worker, a licensed psychologist, or a board certified psychiatrist.

(I) A person who qualifies as a psychology intern as described in Section 2911 of the Business and Professions Code who is under the supervision of a licensed mental health professional (psychiatrist, psychologist, or social worker) in a university hospital or university medical school clinic or a person who has completed the qualifications described in Section 2911 of the Business and Professions Code who is pursuing a postdoctoral and training in a university or university medical school clinic under the supervision of a licensed mental health professional (psychiatrist, psychologist, or

social worker) for the purpose of achieving higher clinical competency.

(3) The loss of income that the victim or the loss of support that the derivative victim has incurred or will incur as a direct result of an injury or death.

(4) Pecuniary loss also includes nonmedical remedial care and treatment rendered in accordance with a religious method of healing recognized by state law.

(5) The amount of family psychiatric, psychological, or mental health counseling expenses necessary as a direct result of the crime for the successful treatment of the victim, provided to family members of the victim in the presence of the victim, whether or not the family member relationship existed at the time of the crime.

(e) "Board" means the State Board of Control.

(f) "Victim centers" means those centers as specified in Section 13835.2 of the Penal Code.

(g) "Peer counselor" means a provider of mental health counseling services who has completed a specialized course in rape crisis counseling skills development, participates in continuing education in rape crisis counseling skills development, and provides rape crisis counseling in consultation with a mental health practitioner licensed within the State of California.

(h) 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 13960 of the Government Code is amended to read:

13960. As used in this article:

(a) (1) "Victim" means a resident of the State of California, a member of the military stationed in California, or a family member living with a member of the military stationed in California who sustains injury or death as a direct result of a crime.

(2) "Derivative victim" means a resident of California who is one of the following:

(A) At the time of the crime was the parent, sibling, spouse, or child of the victim.

(B) At the time of the crime was living in the household of the victim.

(C) A person who had previously lived in the household of the victim for a period of not less than two years in a relationship substantially similar to a relationship listed in subparagraph (A).

(D) Is another family member of the victim, including the victim's fiancé or fiancée, and witnessed the crime.

(E) Is the primary caretaker of a minor victim, but was not the primary caretaker at the time of the crime.

(b) (1) "Injury" includes physical or emotional injury, or both. However, this article does not apply to emotional injury unless that injury is incurred by a victim who also sustains physical injury or

threat of physical injury. For purposes of this article, a victim of a crime committed in violation of Section 261, 262, 271, 273a, 273d, 278, 278.5, 285, 286, 288, 288a, 288.5, or 289, or subdivision (b) or (c) of Section 311.4, of the Penal Code, who sustains emotional injury is presumed to have sustained physical injury. For purposes of this article, a victim of a crime committed in violation of Section 270 of the Penal Code, as a result of conduct other than a failure to pay child support, who sustains emotional injury is presumed to have sustained physical injury if criminal charges were filed or a prosecuting attorney expresses the opinion that the child is a victim of that section.

(2) It is the intent of the Legislature that in order for the presumption set forth in paragraph (1) relating to a violation of Section 278 or 278.5 of the Penal Code to apply, the deprivation of custody as described in those sections shall have endured for not less than 30 days. For the purposes of this paragraph, the child, and not the nonoffending parent or other caretaker, shall be deemed the victim.

(3) A child who has been the witness of a crime or crimes of domestic violence may be presumed by the board to have sustained physical injury.

(c) "Crime" means a crime or public offense that would constitute a misdemeanor or a felony if committed in California by a competent adult which results in injury to a resident of this state, including a crime or public offense, wherever it may take place, when the resident is temporarily absent from the state. "Crime" includes an act of terrorism, as defined in Section 2331 of Title 18 of the United States Code, committed against a resident of the state, whether or not the act occurs within the state. No act involving the operation of a motor vehicle, aircraft, or water vehicle which results in injury or death constitutes a crime for the purposes of this article, except that a crime shall include any of the following:

(1) Injury or death intentionally inflicted through the use of a motor vehicle, aircraft, or water vehicle.

(2) Injury or death caused by a driver in violation of Section 20001 of the Vehicle Code.

(3) Injury or death caused by a person who is under the influence of any alcoholic beverage or drug.

(4) Injury or death caused by a driver of a motor vehicle in the immediate act of fleeing the scene of a crime in which he or she knowingly and willingly participated.

For the purpose of the limitations imposed by this article, a crime shall mean one act or series of related acts arising from the same course of conduct with the same perpetrator or perpetrators against a victim.

(d) "Pecuniary loss" means the following expenses for which the victim or derivative victim has not been and will not be reimbursed from any other source:

(1) The amount of medical or medical-related expenses incurred by the victim, including inpatient psychological or psychiatric expenses, and including, but not limited to, eyeglasses, hearing aids, dentures, or any prosthetic device taken, lost, or destroyed during the commission of the crime, or the use of which became necessary as a direct result of the crime.

(2) The amount of outpatient psychiatric, psychological, or other mental health counseling related expenses which became necessary as a direct result of the crime. These counseling services may only be reimbursed if provided by any of the following individuals:

(A) A person licensed as a physician who is certified in psychiatry by the American Board of Psychiatry and Neurology or who has completed a residency in psychiatry.

(B) A person licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(C) A person licensed as a clinical social worker under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code.

(D) A person licensed as a marriage, family, and child counselor under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(E) A person registered as a psychological assistant who is under the supervision of a licensed psychologist or board certified psychiatrist as required by Section 2913 of the Business and Professions Code.

(F) A person registered with the Board of Psychology who is providing services in a nonprofit community agency pursuant to subdivision (d) of Section 2909 of the Business and Professions Code.

(G) A person registered as a marriage, family, and child counselor intern who is under the supervision of a licensed marriage, family, and child counselor, a licensed clinical social worker, a licensed psychologist, or a licensed physician certified in psychiatry, as specified in Section 4980.44 of the Business and Professions Code.

(H) A person registered as an associate clinical social worker, as defined in Section 4996.18 of the Business and Professions Code, who is under the supervision of a licensed clinical social worker, a licensed psychologist, or a board certified psychiatrist.

(3) The loss of income that the victim or the loss of support that the derivative victim has incurred or will incur as a direct result of an injury or death.

(4) Pecuniary loss also includes nonmedical remedial care and treatment rendered in accordance with a religious method of healing recognized by state law.

(5) The amount of family psychiatric, psychological, or mental health counseling expenses necessary as a direct result of the crime for the successful treatment of the victim, provided to family

members of the victim in the presence of the victim, whether or not the family member relationship existed at the time of the crime.

(e) "Board" means the State Board of Control.

(f) "Victim centers" means those centers as specified in Section 13835.2 of the Penal Code.

(g) "Peer counselor" means a provider of mental health counseling services who has completed a specialized course in rape crisis counseling skills development, participates in continuing education in rape crisis counseling skills development, and provides rape crisis counseling in consultation with a mental health practitioner licensed within the State of California.

(h) 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 13960 of the Government Code is amended to read:

13960. As used in this article:

(a) (1) "Victim" means a resident of the State of California, a member of the military stationed in California, or a family member living with a member of the military stationed in California who sustains injury or death as a direct result of a crime.

(2) "Derivative victim" means a resident of California, or resident of another state, who is one of the following:

(A) At the time of the crime was the parent, sibling, spouse, or child of the victim.

(B) At the time of the crime was living in the household of the victim.

(C) A person who had previously lived in the household of the victim for a period of not less than two years in a relationship substantially similar to a relationship listed in subparagraph (A).

(D) Is another family member of the victim, including the victim's fiancé or fiancée, and witnessed the crime.

(E) Is the primary caretaker of a minor victim, but was not the primary caretaker at the time of the crime.

(b) (1) "Injury" includes physical or emotional injury, or both. However, this article does not apply to emotional injury unless that injury is incurred by a victim who also sustains physical injury or threat of physical injury. For purposes of this article, a victim of a crime committed in violation of Section 261, 262, 271, 273a, 273d, 278, 278.5, 285, 286, 288, 288a, 288.5, or 289, or subdivision (b) or (c) of Section 311.4, of the Penal Code, who sustains emotional injury is presumed to have sustained physical injury. For purposes of this article, a victim of a crime committed in violation of Section 270 of the Penal Code, as a result of conduct other than a failure to pay child support, who sustains emotional injury is presumed to have sustained physical injury if criminal charges were filed. For purposes of this article, a victim of a crime committed in violation of subdivision (d) of Section 261.5 of the Penal Code, who sustains emotional injury, is

presumed to have sustained physical injury if felony charges were filed.

(2) It is the intent of the Legislature that in order for the presumption set forth in paragraph (1) relating to a violation of Section 278 or 278.5 of the Penal Code to apply, the deprivation of custody as described in those sections shall have endured for not less than 30 days. For the purposes of this paragraph, the child, and not the nonoffending parent or other caretaker, shall be deemed the victim.

(3) A child who has been the witness of a crime or crimes of domestic violence may be presumed by the board to have sustained physical injury.

(c) "Crime" means a crime or public offense that would constitute a misdemeanor or a felony if committed in California by a competent adult which results in injury to a resident of this state, including a crime or public offense, wherever it may take place, when the resident is temporarily absent from the state. "Crime" includes an act of terrorism, as defined in Section 2331 of Title 18 of the United States Code, committed against a resident of the state, whether or not the act occurs within the state. No act involving the operation of a motor vehicle, aircraft, or water vehicle which results in injury or death constitutes a crime for the purposes of this article, except that a crime shall include any of the following:

(1) Injury or death intentionally inflicted through the use of a motor vehicle, aircraft, or water vehicle.

(2) Injury or death caused by a driver in violation of Section 20001 of the Vehicle Code.

(3) Injury or death caused by a person who is under the influence of any alcoholic beverage or drug.

(4) Injury or death caused by a driver of a motor vehicle in the immediate act of fleeing the scene of a crime in which he or she knowingly and willingly participated.

(5) Injury or death caused by a person in violation of subdivision (c) of Section 192 or Section 192.5 of the Penal Code.

For the purpose of the limitations imposed by this article, a crime shall mean one act or series of related acts arising from the same course of conduct with the same perpetrator or perpetrators against a victim.

(d) "Pecuniary loss" means the following expenses for which the victim or derivative victim has not been and will not be reimbursed from any other source:

(1) The amount of medical or medical-related expenses incurred by the victim, including inpatient psychological or psychiatric expenses, and including, but not limited to, eyeglasses, hearing aids, dentures, or any prosthetic device taken, lost, or destroyed during the commission of the crime, or the use of which became necessary as a direct result of the crime.

(2) The amount of outpatient psychiatric, psychological, or other mental health counseling related expenses that became necessary as a direct result of the crime. These counseling services may only be reimbursed if provided by any of the following individuals:

(A) A person licensed as a physician who is certified in psychiatry by the American Board of Psychiatry and Neurology or who has completed a residency in psychiatry.

(B) A person licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(C) A person licensed as a clinical social worker under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code.

(D) A person licensed as a marriage, family, and child counselor under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(E) A person registered as a psychological assistant who is under the supervision of a licensed psychologist or board certified psychiatrist as required by Section 2913 of the Business and Professions Code.

(F) A person registered with the Board of Psychology who is providing services in a nonprofit community agency pursuant to subdivision (d) of Section 2909 of the Business and Professions Code.

(G) A person registered as a marriage, family, and child counselor intern who is under the supervision of a licensed marriage, family, and child counselor, a licensed clinical social worker, a licensed psychologist, or a licensed physician certified in psychiatry, as specified in Section 4980.44 of the Business and Professions Code.

(H) A person registered as an associate clinical social worker, as defined in Section 4996.18 of the Business and Professions Code, who is under the supervision of a licensed clinical social worker, a licensed psychologist, or a board certified psychiatrist.

(I) A person who qualifies as a psychology intern as described in Section 2911 of the Business and Professions Code who is under the supervision of a licensed mental health professional (psychiatrist, psychologist, or social worker) in a university hospital or university medical school clinic or a person who has completed the qualifications described in Section 2911 of the Business and Professions Code who is pursuing a postdoctoral and training in a university or university medical school clinic under the supervision of a licensed mental health professional (psychiatrist, psychologist, or social worker) for the purpose of achieving higher clinical competency.

(3) The loss of income that the victim or the loss of support that the derivative victim has incurred or will incur as a direct result of an injury or death.

(4) Pecuniary loss also includes nonmedical remedial care and treatment rendered in accordance with a religious method of healing recognized by state law.

(5) The amount of family psychiatric, psychological, or mental health counseling expenses necessary as a direct result of the crime for the successful treatment of the victim, provided to family members of the victim in the presence of the victim, whether or not the family member relationship existed at the time of the crime.

(e) "Board" means the State Board of Control.

(f) "Victim centers" means those centers as specified in Section 13835.2 of the Penal Code.

(g) "Peer counselor" means a provider of mental health counseling services who has completed a specialized course in rape crisis counseling skills development, participates in continuing education in rape crisis counseling skills development, and provides rape crisis counseling in consultation with a mental health practitioner licensed within the State of California.

(h) 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 13960 is added to the Government Code, to read:

13960. As used in this article:

(a) (1) "Victim" means a resident of the State of California, a member of the military stationed in California, or a family member living with a member of the military stationed in California who sustains injury or death as a direct result of a crime.

(2) "Derivative victim" means a resident of California who is one of the following:

(A) At the time of the crime was the parent, sibling, spouse, or child of the victim.

(B) At the time of the crime was living in the household of the victim.

(C) A person who had previously lived in the household of the victim for a period of not less than two years in a relationship substantially similar to a relationship listed in subparagraph (A).

(D) Is another family member of the victim, including the victim's fiancé, and witnessed the crime.

(b) "Injury" includes physical or emotional injury, or both. However, this article does not apply to emotional injury unless that injury is incurred by a victim who also sustains physical injury or threat of physical injury. For purposes of this article, a victim of a crime committed in violation of Section 261, 262, 271, 273a, 273d, 285, 286, 288, 288a, 288.5, or 289, or subdivision (b) or (c) of Section 311.4, of the Penal Code, who sustains emotional injury is presumed to have sustained physical injury. For purposes of this article, a victim of a crime committed in violation of Section 270 of the Penal Code, as a result of conduct other than a failure to pay child support, who sustains emotional injury is presumed to have sustained physical

injury if criminal charges were filed or a prosecuting attorney expresses the opinion that the child is a victim of that section.

(c) "Crime" means a crime or public offense that would constitute a misdemeanor or a felony if committed in California by a competent adult which results in injury to a resident of this state, including a crime or public offense, wherever it may take place, when the resident is temporarily absent from the state. "Crime" includes an act of terrorism, as defined in Section 2331 of Title 18 of the United States Code, committed against a resident of the state, whether or not the act occurs within the state. No act involving the operation of a motor vehicle, aircraft, or water vehicle which results in injury or death constitutes a crime for the purposes of this article, except that a crime shall include any of the following:

(1) Injury or death intentionally inflicted through the use of a motor vehicle, aircraft, or water vehicle.

(2) Injury or death caused by a driver in violation of Section 20001 of the Vehicle Code.

(3) Injury or death caused by a person who is under the influence of any alcoholic beverage or drug.

(4) Injury or death caused by a driver of a motor vehicle in the immediate act of fleeing the scene of a crime in which he or she knowingly and willingly participated.

For the purpose of the limitations imposed by this article, a crime shall mean one act or series of related acts arising from the same course of conduct with the same perpetrator or perpetrators.

(d) "Pecuniary loss" means the following expenses for which the victim or derivative victim has not been and will not be reimbursed from any other source:

(1) The amount of medical or medical-related expenses incurred by the victim, including inpatient psychological or psychiatric expenses, and including, but not limited to, eyeglasses, hearing aids, dentures, or any prosthetic device taken, lost, or destroyed during the commission of the crime, or the use of which became necessary as a direct result of the crime.

(2) The amount of outpatient psychiatric, psychological, or other mental health counseling related expenses which became necessary as a direct result of the crime. These counseling services may only be reimbursed if provided by any of the following individuals:

(A) A person licensed as a physician who is certified in psychiatry by the American Board of Psychiatry and Neurology or who has completed a residency in psychiatry.

(B) A person licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(C) A person licensed as a clinical social worker under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code.

(D) A person licensed as a marriage, family, and child counselor under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(E) A person registered as a psychological assistant who is under the supervision of a licensed psychologist or board certified psychiatrist as required by Section 2913 of the Business and Professions Code.

(F) A person registered with the Board of Psychology who is providing services in a nonprofit community agency pursuant to subdivision (d) of Section 2909 of the Business and Professions Code.

(G) A person registered as a marriage, family, and child counselor intern who is under the supervision of a licensed marriage, family, and child counselor, a licensed clinical social worker, a licensed psychologist, or a licensed physician certified in psychiatry, as specified in Section 4980.44 of the Business and Professions Code.

(H) A person registered as an associate clinical social worker, as defined in Section 4996.18 of the Business and Professions Code, who is under the supervision of a licensed clinical social worker, a licensed psychologist, or a board certified psychiatrist.

(3) The loss of income that the victim or the loss of support that the derivative victim has incurred or will incur as a direct result of an injury or death.

(4) Pecuniary loss also includes nonmedical remedial care and treatment rendered in accordance with a religious method of healing recognized by state law.

(5) The amount of family psychiatric, psychological, or mental health counseling expenses necessary as a direct result of the crime for the successful treatment of the victim, provided to family members of the victim in the presence of the victim, whether or not the family member relationship existed at the time of the crime.

(e) "Board" means the State Board of Control.

(f) "Victim centers" means those centers as specified in Section 13835.2 of the Penal Code.

(g) "Peer counselor" means a provider of mental health counseling services who has completed a specialized course in rape crisis counseling skills development, participates in continuing education in rape crisis counseling skills development, and provides rape crisis counseling in consultation with a mental health practitioner licensed within the State of California.

(h) This section shall become operative on January 1, 2003.

SEC. 6. (a) Section 2 of this bill incorporates amendments to Section 13960 of the Government Code proposed by both this bill and AB 645. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 13960 of the Government Code, (3) AB 535 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 645, in which case Section 2 of this bill shall

become operative, and Sections 1, 3, and 4 of this bill shall not become operative.

(b) Section 3 of this bill incorporates amendments to Section 13960 of the Government Code proposed by both this bill and AB 535. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 13960 of the Government Code, (3) AB 645 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 535, in which case Section 13960 of the Government Code, as amended by AB 535, shall remain operative only until the operative date of this bill, at which time Section 3 of this bill shall become operative, and Sections 1, 2, and 4 of this bill shall not become operative.

(c) Section 4 of this bill incorporates amendments to Section 13960 of the Government Code proposed by this bill, AB 645, and AB 535. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1999, (2) all three bills amend Section 13960 of the Government Code, and (3) this bill is enacted after AB 645 and AB 535, in which case Section 13960 of the Government Code, as amended by AB 535, shall remain operative only until the operative date of this bill and AB 645, at which time Section 4 of this bill shall become operative, and Sections 1, 2, and 3 of this bill shall not become operative.

CHAPTER 701

An act to amend Sections 13519 and 13701 of the Penal Code, relating to domestic violence.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 13519 of the Penal Code is amended to read:

13519. (a) The commission shall implement by January 1, 1986, a course or courses of instruction for the training of law enforcement officers in California in the handling of domestic violence complaints and also shall develop guidelines for law enforcement response to domestic violence. The course or courses of instruction and the guidelines shall stress enforcement of criminal laws in domestic violence situations, availability of civil remedies and community resources, and protection of the victim. Where appropriate, the training presenters shall include domestic violence experts with expertise in the delivery of direct services to victims of domestic violence, including utilizing the staff of shelters for battered women in the presentation of training.

(b) As used in this section, "law enforcement officer" means any officer or employee of a local police department or sheriff's office, any peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, any peace officer of the University of California Police Department, as defined in subdivision (b) of Section 830.2, any peace officer of the California State University Police Departments, as defined in subdivision (c) of Section 830.2, or a peace officer, as defined in subdivision (d) of Section 830.31.

(c) The course of basic training for law enforcement officers shall, no later than January 1, 1986, include adequate instruction in the procedures and techniques described below:

(1) The provisions set forth in Title 5 (commencing with Section 13700) relating to response, enforcement of court orders, and data collection.

(2) The legal duties imposed on police officers to make arrests and offer protection and assistance including guidelines for making felony and misdemeanor arrests.

(3) Techniques for handling incidents of domestic violence that minimize the likelihood of injury to the officer and that promote the safety of the victim.

(4) The nature and extent of domestic violence.

(5) The signs of domestic violence.

(6) The legal rights of, and remedies available to, victims of domestic violence.

(7) The use of an arrest by a private person in a domestic violence situation.

(8) Documentation, report writing, and evidence collection.

(9) Domestic violence diversion as provided in Chapter 2.6 (commencing with Section 1000.6) of Title 6 of Part 2.

(10) Tenancy issues and domestic violence.

(11) The impact on children of law enforcement intervention in domestic violence.

(12) The services and facilities available to victims and batterers.

(13) The use and applications of this code in domestic violence situations.

(14) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.

(15) Verification and enforcement of stay-away orders.

(16) Cite and release policies.

(17) Emergency assistance to victims and how to assist victims in pursuing criminal justice options.

(d) The guidelines developed by the commission shall also incorporate the foregoing factors.

(e) (1) All law enforcement officers who have received their basic training before January 1, 1986, shall participate in supplementary training on domestic violence subjects, as prescribed and certified by the commission.

(2) Except as provided in paragraph (3), the training specified in paragraph (1) shall be completed no later than January 1, 1989.

(3) (A) The training for peace officers of the Department of Parks and Recreation, as defined in subdivision (g) of Section 830.2, shall be completed no later than January 1, 1992.

(B) The training for peace officers of the University of California Police Department and the California State University Police Departments, as defined in Section 830.2, shall be completed no later than January 1, 1993.

(C) The training for peace officers employed by a housing authority, as defined in subdivision (d) of Section 830.31, shall be completed no later than January 1, 1995.

(4) Local law enforcement agencies are encouraged to include, as a part of their advanced officer training program, periodic updates and training on domestic violence. The commission shall assist where possible.

(f) (1) The course of instruction, the learning and performance objectives, the standards for the training, and the guidelines shall be developed by the commission in consultation with appropriate groups and individuals having an interest and expertise in the field of domestic violence. The groups and individuals shall include, but shall not be limited to, the following: one representative each from the California Peace Officers' Association, the Peace Officers' Research Association of California, the State Bar of California, the California Women Lawyers' Association, and the State Commission on the Status of Women; two representatives from the commission; two representatives from the California Alliance Against Domestic Violence; two peace officers, recommended by the commission, who are experienced in the provision of domestic violence training; and two domestic violence experts, recommended by the California Alliance Against Domestic Violence, who are experienced in the provision of direct services to victims of domestic violence. At least one of the persons selected shall be a former victim of domestic violence.

(2) The commission, in consultation with these groups and individuals, shall review existing training programs to determine in what ways domestic violence training might be included as a part of ongoing programs.

(g) Each law enforcement officer below the rank of supervisor who is assigned to patrol duties and would normally respond to domestic violence calls or incidents of domestic violence shall complete, every two years, an updated course of instruction on domestic violence that is developed according to the standards and guidelines developed pursuant to subdivision (d). The instruction required pursuant to this subdivision shall be funded from existing resources available for the training required pursuant to this section. It is the intent of the Legislature not to increase the annual training costs of local government entities.

SEC. 2. Section 13701 of the Penal Code is amended to read:

13701. (a) Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for officers' responses to domestic violence calls by January 1, 1986. These policies shall reflect that domestic violence is alleged criminal conduct. Further, they shall reflect existing policy that a request for assistance in a situation involving domestic violence is the same as any other request for assistance where violence has occurred.

(b) The written policies shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed. These policies also shall require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order issued under Chapter 4 (commencing with Section 2040) of Part 1 of Division 6, Division 10 (commencing with Section 6200), or Chapter 6 (commencing with Section 7700) of Part 3 of Division 12, of the Family Code, or Section 136.2 of this code, has been violated. These policies shall discourage, when appropriate, but not prohibit, dual arrests. Peace officers shall make reasonable efforts to identify the primary aggressor in any incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person acted in self-defense. These arrest policies shall be developed, adopted, and implemented by July 1, 1996. Notwithstanding subdivision (d), law enforcement agencies shall develop these policies with the input of local domestic violence agencies.

(c) These existing local policies and those developed shall be in writing and shall be available to the public upon request and shall include specific standards for the following:

(1) Felony arrests.

(2) Misdemeanor arrests.

(3) Use of citizen arrests.

(4) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.

(5) Verification and enforcement of stay-away orders.

(6) Cite and release policies.

(7) Emergency assistance to victims and children, such as medical care, transportation to a shelter or a hospital for treatment when necessary, and police standbys for removing personal property and assisting in safe passage out of the victim's residence.

(8) Assisting victims in pursuing criminal options, such as giving the victim the report number and directing the victim to the proper investigation unit.

(9) Furnishing written notice to victims at the scene, including, but not limited to, all of the following information:

(A) A statement informing the victim that despite official restraint of the person alleged to have committed domestic violence, the restrained person may be released at any time.

(B) A statement that, "For further information about a shelter you may contact _____."

(C) A statement that, "For information about other services in the community, where available, you may contact _____."

(D) A statement informing the victim of domestic violence that he or she may ask the district attorney to file a criminal complaint.

(E) A statement informing the victim of the right to go to the superior court and file a petition requesting any of the following orders for relief:

(i) An order restraining the attacker from abusing the victim and other family members.

(ii) An order directing the attacker to leave the household.

(iii) An order preventing the attacker from entering the residence, school, business, or place of employment of the victim.

(iv) An order awarding the victim or the other parent custody of or visitation with a minor child or children.

(v) An order restraining the attacker from molesting or interfering with minor children in the custody of the victim.

(vi) An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so.

(vii) An order directing the defendant to make specified debit payments coming due while the order is in effect.

(viii) An order directing that either or both parties participate in counseling.

(F) A statement informing the victim of the right to file a civil suit for losses suffered as a result of the abuse, including medical expenses, loss of earnings, and other expenses for injuries sustained and damage to property, and any other related expenses incurred by the victim or any agency that shelters the victim.

(G) In the case of an alleged violation of Section 261, 261.5, 262, 286, 288a, or 289, a "Victims of Domestic Violence" card which shall include, but is not limited to, the following information:

(i) The names and locations of rape victim counseling centers within the county, including those centers specified in Section 13837, and their 24-hour counseling service telephone numbers.

(ii) A simple statement on the proper procedures for a victim to follow after a sexual assault.

(iii) A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.

(10) Writing of reports.

(d) In the development of these policies and standards, each local department is encouraged to consult with domestic violence experts, such as the staff of the local shelter for battered women and their

children. Departments may utilize the response guidelines developed by the commission in developing local policies.

SEC. 2.1. Section 13701 of the Penal Code is amended to read:

13701. (a) Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for officers' responses to domestic violence calls by January 1, 1986. These policies shall reflect that domestic violence is alleged criminal conduct. Further, they shall reflect existing policy that a request for assistance in a situation involving domestic violence is the same as any other request for assistance where violence has occurred.

(b) The written policies shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed. These policies also shall require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order issued under Chapter 4 (commencing with Section 2040) of Part 1 of Division 6, Division 10 (commencing with Section 6200), or Chapter 6 (commencing with Section 7700) of Part 3 of Division 12, of the Family Code, or Section 136.2 of this code, has been violated. These policies shall discourage, when appropriate, but not prohibit, dual arrests. Peace officers shall make reasonable efforts to identify the primary aggressor in any incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person acted in self-defense. These arrest policies shall be developed, adopted, and implemented by July 1, 1996. Notwithstanding subdivision (d), law enforcement agencies shall develop these policies with the input of local domestic violence agencies.

(c) These existing local policies and those developed shall be in writing and shall be available to the public upon request and shall include specific standards for the following:

(1) Felony arrests.

(2) Misdemeanor arrests.

(3) Use of citizen arrests.

(4) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.

(5) Verification and enforcement of stay-away orders.

(6) Cite and release policies.

(7) Emergency assistance to victims and children, such as medical care, transportation to a shelter or a hospital for treatment when necessary, and police standbys for removing personal property and assisting in safe passage out of the victim's residence.

(8) Assisting victims in pursuing criminal options, such as giving the victim the report number and directing the victim to the proper investigation unit.

(9) Furnishing written notice to victims at the scene, including, but not limited to, all of the following information:

(A) A statement informing the victim that despite official restraint of the person alleged to have committed domestic violence, the restrained person may be released at any time.

(B) A statement that, "For further information about a shelter you may contact _____."

(C) A statement that, "For information about other services in the community, where available, you may contact _____."

(D) A statement that, "For information about the California victims' compensation program, you may contact 1-800-777-9229."

(E) A statement informing the victim of domestic violence that he or she may ask the district attorney to file a criminal complaint.

(F) A statement informing the victim of the right to go to the superior court and file a petition requesting any of the following orders for relief:

(i) An order restraining the attacker from abusing the victim and other family members.

(ii) An order directing the attacker to leave the household.

(iii) An order preventing the attacker from entering the residence, school, business, or place of employment of the victim.

(iv) An order awarding the victim or the other parent custody of or visitation with a minor child or children.

(v) An order restraining the attacker from molesting or interfering with minor children in the custody of the victim.

(vi) An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so.

(vii) An order directing the defendant to make specified debit payments coming due while the order is in effect.

(viii) An order directing that either or both parties participate in counseling.

(G) A statement informing the victim of the right to file a civil suit for losses suffered as a result of the abuse, including medical expenses, loss of earnings, and other expenses for injuries sustained and damage to property, and any other related expenses incurred by the victim or any agency that shelters the victim.

(H) In the case of an alleged violation of Subdivision (e) of Section 243 or Section 261, 261.5, 262, 273.5, 286, 288a, or 289, a "Victims of Domestic Violence" card which shall include, but is not limited to, the following information:

(i) The names and phone numbers of or local county hotlines for, or both the phone numbers of and local county hotlines for, local shelters for battered women and rape victim counseling centers within the county, including those centers specified in Section 13837, and their 24-hour counseling service telephone numbers.

(ii) A simple statement on the proper procedures for a victim to follow after a sexual assault.

(iii) A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.

(iv) A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime.

(10) Writing of reports.

(d) In the development of these policies and standards, each local department is encouraged to consult with domestic violence experts, such as the staff of the local shelter for battered women and their children. Departments may utilize the response guidelines developed by the commission in developing local policies.

SEC. 2.2. Section 13701 of the Penal Code is amended to read:

13701. (a) Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for officers' responses to domestic violence calls by January 1, 1986. These policies shall reflect that domestic violence is alleged criminal conduct. Further, they shall reflect existing policy that a request for assistance in a situation involving domestic violence is the same as any other request for assistance where violence has occurred.

(b) The written policies shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed. These policies also shall require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order issued under Chapter 4 (commencing with Section 2040) of Part 1 of Division 6, Division 10 (commencing with Section 6200), or Chapter 6 (commencing with Section 7700) of Part 3 of Division 12, of the Family Code, or Section 136.2 of this code, or any other state, tribe, or territory, has been violated. These policies shall discourage, when appropriate, but not prohibit, dual arrests. Peace officers shall make reasonable efforts to identify the primary aggressor in any incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person acted in self-defense. These arrest policies shall be developed, adopted, and implemented by July 1, 1996. Notwithstanding subdivision (d), law enforcement agencies shall develop these policies with the input of local domestic violence agencies.

(c) These existing local policies and those developed shall be in writing and shall be available to the public upon request and shall include specific standards for the following:

(1) Felony arrests.

(2) Misdemeanor arrests.

(3) Use of citizen arrests.

(4) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.

(5) Verification and enforcement of stay-away orders.

(6) Cite and release policies.

(7) Emergency assistance to victims and children, such as medical care, transportation to a shelter or a hospital for treatment when necessary, and police standbys for removing personal property and assisting in safe passage out of the victim's residence.

(8) Assisting victims in pursuing criminal options, such as giving the victim the report number and directing the victim to the proper investigation unit.

(9) Furnishing written notice to victims at the scene, including, but not limited to, all of the following information:

(A) A statement informing the victim that despite official restraint of the person alleged to have committed domestic violence, the restrained person may be released at any time.

(B) A statement that, "For further information about a shelter you may contact _____."

(C) A statement that, "For information about other services in the community, where available, you may contact _____."

(D) A statement informing the victim of domestic violence that he or she may ask the district attorney to file a criminal complaint.

(E) A statement informing the victim of the right to go to the superior court and file a petition requesting any of the following orders for relief:

(i) An order restraining the attacker from abusing the victim and other family members.

(ii) An order directing the attacker to leave the household.

(iii) An order preventing the attacker from entering the residence, school, business, or place of employment of the victim.

(iv) An order awarding the victim or the other parent custody of or visitation with a minor child or children.

(v) An order restraining the attacker from molesting or interfering with minor children in the custody of the victim.

(vi) An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so.

(vii) An order directing the defendant to make specified debit payments coming due while the order is in effect.

(viii) An order directing that either or both parties participate in counseling.

(F) A statement informing the victim of the right to file a civil suit for losses suffered as a result of the abuse, including medical expenses, loss of earnings, and other expenses for injuries sustained and damage to property, and any other related expenses incurred by the victim or any agency that shelters the victim.

(G) In the case of an alleged violation of Section 261, 261.5, 262, 286, 288a, or 289, a "Victims of Domestic Violence" card which shall include, but is not limited to, the following information:

(i) The names and locations of rape victim counseling centers within the county, including those centers specified in Section 13837, and their 24-hour counseling service telephone numbers.

(ii) A simple statement on the proper procedures for a victim to follow after a sexual assault.

(iii) A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.

(10) Writing of reports.

(d) In the development of these policies and standards, each local department is encouraged to consult with domestic violence experts, such as the staff of the local shelter for battered women and their children. Departments may utilize the response guidelines developed by the commission in developing local policies.

SEC. 2.3. Section 13701 of the Penal Code is amended to read:

13701. (a) Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for officers' responses to domestic violence calls by January 1, 1986. These policies shall reflect that domestic violence is alleged criminal conduct. Further, they shall reflect existing policy that a request for assistance in a situation involving domestic violence is the same as any other request for assistance where violence has occurred.

(b) The written policies shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed. These policies also shall require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order issued under Chapter 4 (commencing with Section 2040) of Part 1 of Division 6, Division 10 (commencing with Section 6200), or Chapter 6 (commencing with Section 7700) of Part 3 of Division 12, of the Family Code, or Section 136.2 of this code, or any other state, tribe, or territory has been violated. These policies shall discourage, when appropriate, but not prohibit, dual arrests. Peace officers shall make reasonable efforts to identify the primary aggressor in any incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person acted in self-defense. These arrest policies shall be developed, adopted, and implemented by July 1, 1996. Notwithstanding subdivision (d), law enforcement agencies shall develop these policies with the input of local domestic violence agencies.

(c) These existing local policies and those developed shall be in writing and shall be available to the public upon request and shall include specific standards for the following:

(1) Felony arrests.

(2) Misdemeanor arrests.

(3) Use of citizen arrests.

(4) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.

(5) Verification and enforcement of stay-away orders.

(6) Cite and release policies.

(7) Emergency assistance to victims and children, such as medical care, transportation to a shelter or a hospital for treatment when necessary, and police standbys for removing personal property and assisting in safe passage out of the victim's residence.

(8) Assisting victims in pursuing criminal options, such as giving the victim the report number and directing the victim to the proper investigation unit.

(9) Furnishing written notice to victims at the scene, including, but not limited to, all of the following information:

(A) A statement informing the victim that despite official restraint of the person alleged to have committed domestic violence, the restrained person may be released at any time.

(B) A statement that, "For further information about a shelter you may contact _____."

(C) A statement that, "For information about other services in the community, where available, you may contact _____."

(D) A statement that, "For information about the California victims' compensation program, you may contact 1-800-777-9229."

(E) A statement informing the victim of domestic violence that he or she may ask the district attorney to file a criminal complaint.

(F) A statement informing the victim of the right to go to the superior court and file a petition requesting any of the following orders for relief:

(i) An order restraining the attacker from abusing the victim and other family members.

(ii) An order directing the attacker to leave the household.

(iii) An order preventing the attacker from entering the residence, school, business, or place of employment of the victim.

(iv) An order awarding the victim or the other parent custody of or visitation with a minor child or children.

(v) An order restraining the attacker from molesting or interfering with minor children in the custody of the victim.

(vi) An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so.

(vii) An order directing the defendant to make specified debit payments coming due while the order is in effect.

(viii) An order directing that either or both parties participate in counseling.

(G) A statement informing the victim of the right to file a civil suit for losses suffered as a result of the abuse, including medical expenses, loss of earnings, and other expenses for injuries sustained and damage

to property, and any other related expenses incurred by the victim or any agency that shelters the victim.

(H) In the case of an alleged violation of subdivision (e) of Section 243 or Section 261, 261.5, 262, 273.5, 286, 288a, or 289, a "Victims of Domestic Violence" card which shall include, but is not limited to, the following information:

(i) The names and phone numbers of or local county hotlines for, or both the phone numbers of and local county hotlines for, local shelters for battered women and rape victim counseling centers within the county, including those centers specified in Section 13837, and their 24-hour counseling service telephone numbers.

(ii) A simple statement on the proper procedures for a victim to follow after a sexual assault.

(iii) A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.

(iv) A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime.

(10) Writing of reports.

(d) In the development of these policies and standards, each local department is encouraged to consult with domestic violence experts, such as the staff of the local shelter for battered women and their children. Departments may utilize the response guidelines developed by the commission in developing local policies.

SEC. 3. (a) Section 2.1 of this bill incorporates amendments to Section 13701 of the Penal Code proposed by both this bill and Assembly Bill No. 1201. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 13701 of the Penal Code, (3) Assembly Bill No. 2177 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1201, 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 13701 of the Penal Code proposed by both this bill and Assembly Bill No. 2177. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 13701 of the Penal Code, (3) Assembly Bill No. 1201 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2177, 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 13701 of the Penal Code proposed by this bill, AB 1201, and AB 2177. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1999, (2) all three bills amend Section 13701 of the Penal Code, and (3) this bill is enacted after AB 1201 and AB 2177, in which case Sections 2, 2.1, and 2.2 of this bill shall not become operative.

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

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

CHAPTER 702

An act to amend Sections 6380 and 6380.5 of the Family Code, and to amend Sections 13701 and 13711 of the Penal Code, relating to protective orders.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Protective Order Registry, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to domestic violence pursuant to Section 527.8 of the Code of Civil Procedure, or the

issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective order issued by the court of another state, tribe, or territory, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall

immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, which local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge. The informational packet shall also contain a statement that the protective order is enforceable in any state, territory, or reservation, and general information about agencies in other jurisdictions that may be contacted regarding enforcement of an order issued by a court of this state.

(h) For the purposes of this part, "electronic transmission" shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

SEC. 1.1. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel, or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Protective Order Registry, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data. All data with respect to criminal court protective orders issued under subdivision (g) of Section 136.2 of the Penal Code shall be transmitted by the court or its designee within one business day to law enforcement personnel by either one of the following methods:

(1) Transmitting a physical copy of the order to a local law enforcement agency authorized by the Department of Justice to enter orders into CLETS.

(2) With the approval of the Department of Justice, entering the order into CLETS directly.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to domestic violence pursuant to Section 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective order issued by the court of another state, tribe, or territory, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks

and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, which local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge. The informational packet shall also contain a statement that the protective order is enforceable in any state, territory, or reservation, and general information about agencies in other jurisdictions that may be contacted regarding enforcement of an order issued by a court of this state.

(h) For the purposes of this part, "electronic transmission" shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

SEC. 1.2. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Protective Order Registry, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary

restraining order or injunction relating to harassment or domestic violence pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective order issued by the court of another state, tribe, or territory, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, that local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge. The informational packet shall also contain a statement that the protective order is enforceable in any state, territory, or reservation, and general information about agencies in other jurisdictions that may be contacted regarding enforcement of an order issued by a court of this state.

(h) For the purposes of this part, "electronic transmission" shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

SEC. 1.3. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Protective Order Registry, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to domestic violence pursuant to Section 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court

restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective order issued by the court of another state, tribe, or territory, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

(8) The terms and conditions of any restrictions on the ownership or possession of firearms.

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall

immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, which local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge. The informational packet shall also contain a statement that the protective order is enforceable in any state, territory, or reservation, and general information about agencies in other jurisdictions that may be contacted regarding enforcement of an order issued by a court of this state.

(h) For the purposes of this part, "electronic transmission" shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

SEC. 1.4. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel, or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Protective Order Registry, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data. All data with respect to criminal court protective orders issued under subdivision (g) of Section 136.2 of the Penal Code shall be transmitted by the court or its designee within one business day to law enforcement personnel by either one of the following methods:

(1) Transmitting a physical copy of the order to a local law enforcement agency authorized by the Department of Justice to enter orders into CLETS.

(2) With the approval of the Department of Justice, entering the order into CLETS directly.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to harassment or domestic violence pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective order issued by the court of another state, tribe, or territory, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks

and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, which local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge. The informational packet shall also contain a statement that the protective order is enforceable in any state, territory, or reservation, and general information about agencies in other jurisdictions that may be contacted regarding enforcement of an order issued by a court of this state.

(h) For the purposes of this part, "electronic transmission" shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

SEC. 1.5. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Protective Order Registry, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary

restraining order or injunction relating to harassment or domestic violence pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective order issued by the court of another state, tribe, or territory, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

(8) The terms and conditions of any restrictions on the ownership or possession of firearms.

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and

injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, that local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge. The informational packet shall also contain a statement that the protective order is enforceable in any state, territory, or reservation, and general information about agencies in other jurisdictions that may be contacted regarding enforcement of an order issued by a court of this state.

(h) For the purposes of this part, "electronic transmission" shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

SEC. 1.6. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel, or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Protective Order Registry, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data. All data with respect to criminal court protective orders issued under subdivision (g) of Section 136.2 of the Penal Code shall be transmitted by the court or its designee within one business day to law enforcement personnel by either one of the following methods:

(1) Transmitting a physical copy of the order to a local law enforcement agency authorized by the Department of Justice to enter orders into CLETS.

(2) With the approval of the Department of Justice, entering the order into CLETS directly.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to domestic violence pursuant to Section 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective order issued by the court of another state, tribe, or territory, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

(8) The terms and conditions of any restrictions on the ownership or possession of firearms.

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective

order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, which local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge. The informational packet shall also contain a statement that the protective order is enforceable in any state, territory, or reservation, and general information about agencies in other jurisdictions that may be contacted regarding enforcement of an order issued by a court of this state.

(h) For the purposes of this part, "electronic transmission" shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

SEC. 1.7. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Protective Order Registry, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based

upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data. All data with respect to criminal court protective orders issued under subdivision (g) of Section 136.2 of the Penal Code shall be transmitted by the court or its designee within one business day to law enforcement personnel by either one of the following methods:

(1) Transmitting a physical copy of the order to a local law enforcement agency authorized by the Department of Justice to enter orders into CLETS.

(2) With the approval of the Department of Justice, entering the order into CLETS directly.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to harassment or domestic violence pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective order issued by the court of another state, tribe, or territory, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

(8) The terms and conditions of any restrictions on the ownership or possession of firearms.

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms

of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, which local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge. The informational packet shall also contain a statement that the protective order is enforceable in any state, territory, or reservation, and general information about agencies in other jurisdictions that may be contacted regarding enforcement of an order issued by a court of this state.

(h) For the purposes of this part, "electronic transmission" shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

SEC. 2. Section 6380.5 of the Family Code is amended to read:

6380.5. (a) An out-of-state protective or restraining order issued by a state, tribal, or territorial court related to domestic or family violence shall be deemed valid if the issuing court had jurisdiction over the parties and matter under the law of the state, tribe, or territory. There shall be a presumption of validity where an order appears authentic on its face.

(b) Any valid protective or restraining order related to domestic or family violence issued by a court of another state, tribe, or territory

shall, upon request of the person in possession of the foreign protective order, be registered with a court of this state in order to be entered in the Domestic Violence Protective Order Registry established under this chapter. The Judicial Council shall adopt rules of court to do the following:

(1) Set forth the process whereby a person in possession of a valid foreign protective order may voluntarily register the order with a court of this state for entry into the Domestic Violence Protective Order Registry.

(2) Require the sealing of foreign protective orders and provide access only to law enforcement, the person who registered the order upon written request with proof of identification, the defense after arraignment on criminal charges involving an alleged violation of the order, or upon further order of the court.

(c) Any valid protective or restraining order related to domestic or family violence issued by a court of another state, tribe, or territory shall be accorded full faith and credit by the courts of this state, and shall be enforced as set forth in Section 6381, as if it had been issued in this state.

SEC. 3. Section 13701 of the Penal Code is amended to read:

13701. (a) Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for officers' responses to domestic violence calls by January 1, 1986. These policies shall reflect that domestic violence is alleged criminal conduct. Further, they shall reflect existing policy that a request for assistance in a situation involving domestic violence is the same as any other request for assistance where violence has occurred.

(b) The written policies shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed. These policies also shall require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order issued under Chapter 4 (commencing with Section 2040) of Part 1 of Division 6, Division 10 (commencing with Section 6200), or Chapter 6 (commencing with Section 7700) of Part 3 of Division 12, of the Family Code, or Section 136.2 of this code, or any other state, tribe, or territory, has been violated. These policies shall discourage, when appropriate, but not prohibit, dual arrests. Peace officers shall make reasonable efforts to identify the primary aggressor in any incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person acted in self-defense. These arrest policies shall be developed, adopted, and implemented by July 1, 1996. Notwithstanding subdivision (d), law enforcement agencies shall

develop these policies with the input of local domestic violence agencies.

(c) These existing local policies and those developed shall be in writing and shall be available to the public upon request and shall include specific standards for the following:

(1) Felony arrests.

(2) Misdemeanor arrests.

(3) Use of citizen arrests.

(4) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.

(5) Verification and enforcement of stay-away orders.

(6) Cite and release policies.

(7) Emergency assistance to victims, such as medical care, transportation to a shelter, and police standbys for removing personal property.

(8) Assisting victims in pursuing criminal options, such as giving the victim the report number and directing the victim to the proper investigation unit.

(9) Furnishing written notice to victims at the scene, including, but not limited to, all of the following information:

(A) A statement informing the victim that despite official restraint of the person alleged to have committed domestic violence, the restrained person may be released at any time.

(B) A statement that, "For further information about a shelter you may contact _____."

(C) A statement that, "For information about other services in the community, where available, you may contact _____."

(D) A statement informing the victim of domestic violence that he or she may ask the district attorney to file a criminal complaint.

(E) A statement informing the victim of the right to go to the superior court and file a petition requesting any of the following orders for relief:

(i) An order restraining the attacker from abusing the victim and other family members.

(ii) An order directing the attacker to leave the household.

(iii) An order preventing the attacker from entering the residence, school, business, or place of employment of the victim.

(iv) An order awarding the victim or the other parent custody of or visitation with a minor child or children.

(v) An order restraining the attacker from molesting or interfering with minor children in the custody of the victim.

(vi) An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so.

(vii) An order directing the defendant to make specified debit payments coming due while the order is in effect.

(viii) An order directing that either or both parties participate in counseling.

(F) A statement informing the victim of the right to file a civil suit for losses suffered as a result of the abuse, including medical expenses, loss of earnings, and other expenses for injuries sustained and damage to property, and any other related expenses incurred by the victim or any agency that shelters the victim.

(G) In the case of an alleged violation of Section 261, 261.5, 262, 286, 288a, or 289, a "Victims of Domestic Violence" card which shall include, but is not limited to, the following information:

(i) The names and locations of rape victim counseling centers within the county, including those centers specified in Section 13837, and their 24-hour counseling service telephone numbers.

(ii) A simple statement on the proper procedures for a victim to follow after a sexual assault.

(iii) A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.

(10) Writing of reports.

(d) In the development of these policies and standards, each local department is encouraged to consult with domestic violence experts, such as the staff of the local shelter for battered women and their children. Departments may utilize the response guidelines developed by the commission in developing local policies.

SEC. 3.1. Section 13701 of the Penal Code is amended to read:

13701. (a) Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for officers' responses to domestic violence calls by January 1, 1986. These policies shall reflect that domestic violence is alleged criminal conduct. Further, they shall reflect existing policy that a request for assistance in a situation involving domestic violence is the same as any other request for assistance where violence has occurred.

(b) The written policies shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed. These policies also shall require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order issued under Chapter 4 (commencing with Section 2040) of Part 1 of Division 6, Division 10 (commencing with Section 6200), or Chapter 6 (commencing with Section 7700) of Part 3 of Division 12, of the Family Code, or Section 136.2 of this code, or any other state, tribe, or territory, has been violated. These policies shall discourage, when appropriate, but not prohibit, dual arrests. Peace officers shall make reasonable efforts to identify the primary aggressor in any incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person acted in self-defense. These arrest policies

shall be developed, adopted, and implemented by July 1, 1996. Notwithstanding subdivision (d), law enforcement agencies shall develop these policies with the input of local domestic violence agencies.

(c) These existing local policies and those developed shall be in writing and shall be available to the public upon request and shall include specific standards for the following:

(1) Felony arrests.

(2) Misdemeanor arrests.

(3) Use of citizen arrests.

(4) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.

(5) Verification and enforcement of stay-away orders.

(6) Cite and release policies.

(7) Emergency assistance to victims, such as medical care, transportation to a shelter, and police standbys for removing personal property.

(8) Assisting victims in pursuing criminal options, such as giving the victim the report number and directing the victim to the proper investigation unit.

(9) Furnishing written notice to victims at the scene, including, but not limited to, all of the following information:

(A) A statement informing the victim that despite official restraint of the person alleged to have committed domestic violence, the restrained person may be released at any time.

(B) A statement that, "For further information about a shelter you may contact _____."

(C) A statement that, "For information about other services in the community, where available, you may contact _____."

(D) A statement that, "For information about the California victims' compensation program, you may contact 1-800-777-9229."

(E) A statement informing the victim of domestic violence that he or she may ask the district attorney to file a criminal complaint.

(F) A statement informing the victim of the right to go to the superior court and file a petition requesting any of the following orders for relief:

(i) An order restraining the attacker from abusing the victim and other family members.

(ii) An order directing the attacker to leave the household.

(iii) An order preventing the attacker from entering the residence, school, business, or place of employment of the victim.

(iv) An order awarding the victim or the other parent custody of or visitation with a minor child or children.

(v) An order restraining the attacker from molesting or interfering with minor children in the custody of the victim.

(vi) An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so.

(vii) An order directing the defendant to make specified debit payments coming due while the order is in effect.

(viii) An order directing that either or both parties participate in counseling.

(G) A statement informing the victim of the right to file a civil suit for losses suffered as a result of the abuse, including medical expenses, loss of earnings, and other expenses for injuries sustained and damage to property, and any other related expenses incurred by the victim or any agency that shelters the victim.

(H) In the case of an alleged violation of subdivision (e) of Section 243 or Section 261, 261.5, 262, 273.5, 286, 288a, or 289, a "Victims of Domestic Violence" card which shall include, but is not limited to, the following information:

(i) The names and phone numbers of or local county hotlines for, or both the phone numbers of and local county hotlines for, local shelters for battered women and rape victim counseling centers within the county, including those centers specified in Section 13837, and their 24-hour counseling service telephone numbers.

(ii) A simple statement on the proper procedures for a victim to follow after a sexual assault.

(iii) A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.

(iv) A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime.

(10) Writing of reports.

(d) In the development of these policies and standards, each local department is encouraged to consult with domestic violence experts, such as the staff of the local shelter for battered women and their children. Departments may utilize the response guidelines developed by the commission in developing local policies.

SEC. 3.2. Section 13701 of the Penal Code is amended to read:

13701. (a) Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for officers' responses to domestic violence calls by January 1, 1986. These policies shall reflect that domestic violence is alleged criminal conduct. Further, they shall reflect existing policy that a request for assistance in a situation involving domestic violence is the same as any other request for assistance where violence has occurred.

(b) The written policies shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed. These policies also shall require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order issued under Chapter 4 (commencing with Section 2040) of Part 1 of Division 6, Division 10 (commencing with Section 6200), or Chapter 6 (commencing with Section 7700) of Part 3 of Division 12, of the Family Code, or Section 136.2 of this code, or any

other state, tribe, or territory, has been violated. These policies shall discourage, when appropriate, but not prohibit, dual arrests. Peace officers shall make reasonable efforts to identify the primary aggressor in any incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person acted in self-defense. These arrest policies shall be developed, adopted, and implemented by July 1, 1996. Notwithstanding subdivision (d), law enforcement agencies shall develop these policies with the input of local domestic violence agencies.

(c) These existing local policies and those developed shall be in writing and shall be available to the public upon request and shall include specific standards for the following:

(1) Felony arrests.

(2) Misdemeanor arrests.

(3) Use of citizen arrests.

(4) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.

(5) Verification and enforcement of stay-away orders.

(6) Cite and release policies.

(7) Emergency assistance to victims and children, such as medical care, transportation to a shelter or a hospital for treatment when necessary, and police standbys for removing personal property and assisting in safe passage out of the victim's residence.

(8) Assisting victims in pursuing criminal options, such as giving the victim the report number and directing the victim to the proper investigation unit.

(9) Furnishing written notice to victims at the scene, including, but not limited to, all of the following information:

(A) A statement informing the victim that despite official restraint of the person alleged to have committed domestic violence, the restrained person may be released at any time.

(B) A statement that, "For further information about a shelter you may contact _____."

(C) A statement that, "For information about other services in the community, where available, you may contact _____."

(D) A statement informing the victim of domestic violence that he or she may ask the district attorney to file a criminal complaint.

(E) A statement informing the victim of the right to go to the superior court and file a petition requesting any of the following orders for relief:

(i) An order restraining the attacker from abusing the victim and other family members.

(ii) An order directing the attacker to leave the household.

(iii) An order preventing the attacker from entering the residence, school, business, or place of employment of the victim.

(iv) An order awarding the victim or the other parent custody of or visitation with a minor child or children.

(v) An order restraining the attacker from molesting or interfering with minor children in the custody of the victim.

(vi) An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so.

(vii) An order directing the defendant to make specified debit payments coming due while the order is in effect.

(viii) An order directing that either or both parties participate in counseling.

(F) A statement informing the victim of the right to file a civil suit for losses suffered as a result of the abuse, including medical expenses, loss of earnings, and other expenses for injuries sustained and damage to property, and any other related expenses incurred by the victim or any agency that shelters the victim.

(G) In the case of an alleged violation of Section 261, 261.5, 262, 286, 288a, or 289, a "Victims of Domestic Violence" card which shall include, but is not limited to, the following information:

(i) The names and locations of rape victim counseling centers within the county, including those centers specified in Section 13837, and their 24-hour counseling service telephone numbers.

(ii) A simple statement on the proper procedures for a victim to follow after a sexual assault.

(iii) A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.

(10) Writing of reports.

(d) In the development of these policies and standards, each local department is encouraged to consult with domestic violence experts, such as the staff of the local shelter for battered women and their children. Departments may utilize the response guidelines developed by the commission in developing local policies.

SEC. 3.3. Section 13701 of the Penal Code is amended to read:

13701. (a) Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for officers' responses to domestic violence calls by January 1, 1986. These policies shall reflect that domestic violence is alleged criminal conduct. Further, they shall reflect existing policy that a request for assistance in a situation involving domestic violence is the same as any other request for assistance where violence has occurred.

(b) The written policies shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed. These policies also shall require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order issued under Chapter 4 (commencing with Section 2040) of Part 1 of Division 6, Division 10 (commencing with Section

6200), or Chapter 6 (commencing with Section 7700) of Part 3 of Division 12, of the Family Code, or Section 136.2 of this code, or any other state, tribe, or territory, has been violated. These policies shall discourage, when appropriate, but not prohibit, dual arrests. Peace officers shall make reasonable efforts to identify the primary aggressor in any incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person acted in self-defense. These arrest policies shall be developed, adopted, and implemented by July 1, 1996. Notwithstanding subdivision (d), law enforcement agencies shall develop these policies with the input of local domestic violence agencies.

(c) These existing local policies and those developed shall be in writing and shall be available to the public upon request and shall include specific standards for the following:

(1) Felony arrests.

(2) Misdemeanor arrests.

(3) Use of citizen arrests.

(4) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.

(5) Verification and enforcement of stay-away orders.

(6) Cite and release policies.

(7) Emergency assistance to victims, such as medical care, transportation to a shelter, or a hospital for treatment when necessary, and police standbys for removing personal property and assistance in safe passage out of the victim's residence.

(8) Assisting victims in pursuing criminal options, such as giving the victim the report number and directing the victim to the proper investigation unit.

(9) Furnishing written notice to victims at the scene, including, but not limited to, all of the following information:

(A) A statement informing the victim that despite official restraint of the person alleged to have committed domestic violence, the restrained person may be released at any time.

(B) A statement that, "For further information about a shelter you may contact _____."

(C) A statement that, "For information about other services in the community, where available, you may contact _____."

(D) A statement that, "For information about the California victims' compensation program, you may contact 1-800-777-9229."

(E) A statement informing the victim of domestic violence that he or she may ask the district attorney to file a criminal complaint.

(F) A statement informing the victim of the right to go to the superior court and file a petition requesting any of the following orders for relief:

(i) An order restraining the attacker from abusing the victim and other family members.

(ii) An order directing the attacker to leave the household.

(iii) An order preventing the attacker from entering the residence, school, business, or place of employment of the victim.

(iv) An order awarding the victim or the other parent custody of or visitation with a minor child or children.

(v) An order restraining the attacker from molesting or interfering with minor children in the custody of the victim.

(vi) An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so.

(vii) An order directing the defendant to make specified debit payments coming due while the order is in effect.

(viii) An order directing that either or both parties participate in counseling.

(G) A statement informing the victim of the right to file a civil suit for losses suffered as a result of the abuse, including medical expenses, loss of earnings, and other expenses for injuries sustained and damage to property, and any other related expenses incurred by the victim or any agency that shelters the victim.

(H) In the case of an alleged violation of subdivision (e) of Section 243 or Section 261, 261.5, 262, 273.5, 286, 288a, or 289, a "Victims of Domestic Violence" card which shall include, but is not limited to, the following information:

(i) The names and phone numbers of or local county hotlines for, or both the phone numbers of and local county hotlines for, local shelters for battered women and rape victim counseling centers within the county, including those centers specified in Section 13837, and their 24-hour counseling service telephone numbers.

(ii) A simple statement on the proper procedures for a victim to follow after a sexual assault.

(iii) A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.

(iv) A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime.

(10) Writing of reports.

(d) In the development of these policies and standards, each local department is encouraged to consult with domestic violence experts, such as the staff of the local shelter for battered women and their children. Departments may utilize the response guidelines developed by the commission in developing local policies.

SEC. 4. Section 13711 of the Penal Code is amended to read:

13711. Whenever a protection order with respect to domestic violence incidents, including orders issued pursuant to Section 136.2 and restraining orders, is applied for or issued, it shall be the responsibility of the clerk of the superior court to distribute a pamphlet to the person who is to be protected by the order that includes the following:

(a) Information as specified in subdivision (i) of Section 13701.

(b) Notice that it is the responsibility of the victim to request notification of an inmate's release.

(c) Notice that the terms and conditions of the protection order remain enforceable, notwithstanding any acts of the parties, and may be changed only by order of the court.

(d) Notice that the protection order is enforceable in any state, territory, or reservation, and general information about agencies in other jurisdictions that may be contacted regarding enforcement of a protective order issued by a court of this state.

SEC. 5. (a) Section 1.1 of this bill incorporates amendments to Section 6380 of the Family Code proposed by both this bill and AB 1531. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 6380 of the Family Code, (3) AB 2801 and SB 1682 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1531, in which case Sections 1, 1.2, 1.3, 1.4, 1.5, 1.6, and 1.7 of this bill shall not become operative.

(b) Section 1.2 this bill incorporates amendments to Section 6380 of the Family Code proposed by both this bill and AB 2801. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 6380 of the Family Code, (3) AB 1531 and SB 1682 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 2801 in which case Sections 1, 1.1, 1.3, 1.4, 1.5, 1.6, and 1.7 of this bill shall not become operative.

(c) Section 1.3 this bill incorporates amendments to Section 6380 of the Family Code proposed by both this bill and SB 1682. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 6380 of the Family Code, (3) AB 1531 and AB 2801 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after SB 1682 in which case Sections 1, 1.1, 1.2, 1.4, 1.5, 1.6, and 1.7 of this bill shall not become operative.

(d) Section 1.4 this bill incorporates amendments to Section 6380 of the Family Code proposed by this bill, AB 1531, and AB 2801. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1999, (2) all three bills amend Section 6380 of the Family Code, (3) SB 1682 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1531 and AB 2801, in which case Sections 1, 1.1, 1.2, 1.3, 1.5, 1.6, and 1.7 of this bill shall not become operative.

(e) Section 1.5 this bill incorporates amendments to Section 6380 of the Family Code proposed by this bill, AB 2801, and SB 1682. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1999, (2) all three bills amend Section 6380 of the Family Code, (3) AB 1531 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2801 and SB 1682, in which case Sections 1, 1.1, 1.2, 1.3, 1.4, 1.6, and 1.7 of this bill shall not become operative.

(f) Section 1.6 this bill incorporates amendments to Section 6380 of the Family Code proposed by this bill, AB 1531, and SB 1682. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1999, (2) all three bills amend Section 6380 of the Family Code, (3) AB 2801 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1531 and SB 1682, in which case Sections 1, 1.1, 1.2, 1.3, 1.4, 1.5, and 1.7 of this bill shall not become operative.

(g) Section 1.7 this bill incorporates amendments to Section 6380 of the Family Code proposed by this bill, AB 1531, AB 2801, and SB 1682. It shall only become operative if (1) all four bills are enacted and become effective on or before January 1, 1999, (2) all four bills amend Section 6380 of the Family Code, and (3) this bill is enacted after AB 1531, AB 2801, and SB 1682, in which case Sections 1, 1.1, 1.2, 1.3, 1.4, 1.5, and 1.6 of this bill shall not become operative.

SEC. 6. (a) Section 3.1 of this bill incorporates amendments to Section 13701 of the Penal Code proposed by both this bill and AB 1201. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 13701 of the Penal Code, (3) AB 2172 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1201, 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 13701 of the Penal Code proposed by both this bill and AB 2172. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 13701 of the Penal Code, (3) AB 1201 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2172, 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 13701 of the Penal Code proposed by this bill, AB 1201, and AB 2172. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1999, (2) all three bills amend Section 13701 of the Penal Code, and (3) this bill is enacted after AB 1201, and AB 2172, in which case Sections 3, 3.1, and 3.2 of this bill shall not become operative.

SEC. 7. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act

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

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

CHAPTER 703

An act to add Section 6390 to the Family Code, relating to domestic violence.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. The Legislature finds and declares that domestic violence courts have been proven to benefit victims of domestic violence and to provide for the efficient handling of domestic violence cases.

SEC. 2. Section 6390 is added to the Family Code, to read:

6390. (a) The Judicial Council shall conduct a descriptive study of the various domestic violence courts established in California and other states. As used in this section, "domestic violence courts" means the assignment of civil or criminal cases, or both, involving domestic violence to one department of the superior court or municipal court, consistent with the jurisdiction of those courts. The study shall describe the policies and procedures used in domestic violence courts and provide an analysis and rationale for the common features of these courts. The study shall identify issues and potential obstacles, if any, to be considered in developing and implementing effective domestic violence courts at the local level.

(b) The Judicial Council shall report to the Legislature no later than March 1, 2000, with respect to the study required by subdivision (a).

CHAPTER 704

An act to amend Section 3030 of the Family Code, and to amend Section 362.1 of the Welfare and Institutions Code, relating to children.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 3030 of the Family Code is amended to read:

3030. (a) No person shall be granted custody of, or unsupervised visitation with, a child if the person is required to be registered as a sex offender under Section 290 of the Penal Code where the victim was a minor, or if the person has been convicted under Section 273a, 273d, or 647.6 of the Penal Code, unless the court finds that there is no significant risk to the child.

(b) No person shall be granted custody of, or visitation with, a child if the person has been convicted under Section 261 of the Penal Code and the child was conceived as a result of that violation.

(c) No person shall be granted custody of, or unsupervised visitation with, a child if the person has been convicted of murder in the first degree, as defined in Section 189 of the Penal Code, and the victim of the murder was the other parent of the child who is the subject of the order, unless the court finds that there is no risk to the child's health, safety, and welfare, and states the reasons for its finding in writing or on the record. In making its finding, the court may consider, among other things, the following:

(1) The wishes of the child, if the child is of sufficient age and capacity to reason so as to form an intelligent preference.

(2) Credible evidence that the convicted parent was a victim of abuse, as defined in Section 6203, committed by the deceased parent. That evidence may include, but is not limited to, written reports by law enforcement agencies, child protective services or other social welfare agencies, courts, medical facilities, or other public agencies or private nonprofit organizations providing services to victims of domestic abuse.

(3) Testimony of an expert witness, qualified under Section 1107 of the Evidence Code, that the convicted parent suffers from the effects of battered women's syndrome.

Unless and until a custody or visitation order is issued pursuant to this subdivision, no person shall permit or cause the child to visit or remain in the custody of the convicted parent without the consent of the child's custodian or legal guardian.

(d) The court may order child support that is to be paid by a person subject to subdivision (a), (b), or (c) to be paid through the

district attorney's office, as authorized by Section 4573 of the Family Code and Section 11475.1 of the Welfare and Institutions Code.

(e) The court shall not disclose, or cause to be disclosed, the custodial parent's place of residence, place of employment, or the child's school, unless the court finds that the disclosure would be in the best interest of the child.

SEC. 1.5. Section 3030 of the Family Code is amended to read:

3030. (a) No person shall be granted physical or legal custody of, or unsupervised visitation with, a child if the person is required to be registered as a sex offender under Section 290 of the Penal Code where the victim was a minor, or if the person has been convicted under Section 273a, 273d, or 647.6 of the Penal Code, unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record.

(b) No person shall be granted custody of, or visitation with, a child if the person has been convicted under Section 261 of the Penal Code and the child was conceived as a result of that violation.

(c) No person shall be granted custody of, or unsupervised visitation with, a child if the person has been convicted of murder in the first degree, as defined in Section 189 of the Penal Code, and the victim of the murder was the other parent of the child who is the subject of the order, unless the court finds that there is no risk to the child's health, safety, and welfare, and states the reasons for its finding in writing or on the record. In making its finding, the court may consider, among other things, the following:

(1) The wishes of the child, if the child is of sufficient age and capacity to reason so as to form an intelligent preference.

(2) Credible evidence that the convicted parent was a victim of abuse, as defined in Section 6203, committed by the deceased parent. That evidence may include, but is not limited to, written reports by law enforcement agencies, child protective services or other social welfare agencies, courts, medical facilities, or other public agencies or private nonprofit organizations providing services to victims of domestic abuse.

(3) Testimony of an expert witness, qualified under Section 1107 of the Evidence Code, that the convicted parent suffers from the effects of battered women's syndrome.

Unless and until a custody or visitation order is issued pursuant to this subdivision, no person shall permit or cause the child to visit or remain in the custody of the convicted parent without the consent of the child's custodian or legal guardian.

(d) The court may order child support that is to be paid by a person subject to subdivision (a), (b), or (c) to be paid through the district attorney's office, as authorized by Section 4573 of the Family Code and Section 11475.1 of the Welfare and Institutions Code.

(e) The court shall not disclose, or cause to be disclosed, the custodial parent's place of residence, place of employment, or the

child's school, unless the court finds that the disclosure would be in the best interest of the child.

SEC. 2. Section 362.1 of the Welfare and Institutions Code is amended to read:

362.1. In order to maintain ties between the parent or guardian and any siblings and the child, and to provide information relevant to deciding if, and when, to return a child to the custody of his or her parent or guardian, or to encourage or suspend sibling interaction, any order placing a child in foster care, and ordering reunification services, shall provide as follows:

(a) (1) Subject to paragraph (2), for visitation between the parent or guardian and the child. Visitation shall be as frequent as possible, consistent with the well-being of the child.

(2) No visitation order shall jeopardize the safety of the child. To protect the safety of the child, the court may keep the child's address confidential. If the parent of the child has been convicted of murder in the first degree, as defined in Section 189 of the Penal Code, and the victim of the murder was the other parent of the child, the court shall order visitation between the child and the parent only if that order would be consistent with Section 3030 of the Family Code.

(b) For visitation between the child and any siblings, or for the suspension of interaction between the child and any siblings, pursuant to subdivision (b) of Section 16002, if the court notes in the order the reasons for its determination that sibling interaction is detrimental to the child.

SEC. 3. This act shall become operative only if Assembly Bill 2386 is also enacted and becomes effective on or before January 1, 1999.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 3030 of the Family Code proposed by both this bill and AB 1645. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 3030 of the Family Code, and (3) this bill is enacted after AB 1645, in which case Section 1 of this bill shall not become operative.

CHAPTER 705

An act to amend Section 3030 of the Family Code, and to amend Section 362.1 of the Welfare and Institutions Code, relating to children.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 3030 of the Family Code is amended to read:

3030. (a) No person shall be granted custody of, or unsupervised visitation with, a child if the person is required to be registered as a sex offender under Section 290 of the Penal Code where the victim was a minor, or if the person has been convicted under Section 273a, 273d, or 647.6 of the Penal Code, unless the court finds that there is no significant risk to the child.

(b) No person shall be granted custody of, or visitation with, a child if the person has been convicted under Section 261 of the Penal Code and the child was conceived as a result of that violation.

(c) No person shall be granted custody of, or unsupervised visitation with, a child if the person has been convicted of murder in the first degree, as defined in Section 189 of the Penal Code, and the victim of the murder was the other parent of the child who is the subject of the order, unless the court finds that there is no risk to the child's health, safety, and welfare, and states the reasons for its finding in writing or on the record. In making its finding, the court may consider, among other things, the following:

(1) The wishes of the child, if the child is of sufficient age and capacity to reason so as to form an intelligent preference.

(2) Credible evidence that the convicted parent was a victim of abuse, as defined in Section 6203, committed by the deceased parent. That evidence may include, but is not limited to, written reports by law enforcement agencies, child protective services or other social welfare agencies, courts, medical facilities, or other public agencies or private nonprofit organizations providing services to victims of domestic abuse.

(3) Testimony of an expert witness, qualified under Section 1107 of the Evidence Code, that the convicted parent suffers from the effects of battered women's syndrome.

Unless and until a custody or visitation order is issued pursuant to this subdivision, no person shall permit or cause the child to visit or remain in the custody of the convicted parent without the consent of the child's custodian or legal guardian.

(d) The court may order child support that is to be paid by a person subject to subdivision (a), (b), or (c) to be paid through the district attorney's office, as authorized by Section 4573 of the Family Code and Section 11475.1 of the Welfare and Institutions Code.

(e) The court shall not disclose, or cause to be disclosed, the custodial parent's place of residence, place of employment, or the child's school, unless the court finds that the disclosure would be in the best interest of the child.

SEC. 1.5. Section 3030 of the Family Code is amended to read:

3030. (a) No person shall be granted physical or legal custody of, or unsupervised visitation with, a child if the person is required to be registered as a sex offender under Section 290 of the Penal Code where the victim was a minor, or if the person has been convicted under Section 273a, 273d, or 647.6 of the Penal Code, unless the court

finds that there is no significant risk to the child and states its reasons in writing or on the record.

(b) No person shall be granted custody of, or visitation with, a child if the person has been convicted under Section 261 of the Penal Code and the child was conceived as a result of that violation.

(c) No person shall be granted custody of, or unsupervised visitation with, a child if the person has been convicted of murder in the first degree, as defined in Section 189 of the Penal Code, and the victim of the murder was the other parent of the child who is the subject of the order, unless the court finds that there is no risk to the child's health, safety, and welfare, and states the reasons for its finding in writing or on the record. In making its finding, the court may consider, among other things, the following:

(1) The wishes of the child, if the child is of sufficient age and capacity to reason so as to form an intelligent preference.

(2) Credible evidence that the convicted parent was a victim of abuse, as defined in Section 6203, committed by the deceased parent. That evidence may include, but is not limited to, written reports by law enforcement agencies, child protective services or other social welfare agencies, courts, medical facilities, or other public agencies or private nonprofit organizations providing services to victims of domestic abuse.

(3) Testimony of an expert witness, qualified under Section 1107 of the Evidence Code, that the convicted parent suffers from the effects of battered women's syndrome.

Unless and until a custody or visitation order is issued pursuant to this subdivision, no person shall permit or cause the child to visit or remain in the custody of the convicted parent without the consent of the child's custodian or legal guardian.

(d) The court may order child support that is to be paid by a person subject to subdivision (a), (b), or (c) to be paid through the district attorney's office, as authorized by Section 4573 of the Family Code and Section 11475.1 of the Welfare and Institutions Code.

(e) The court shall not disclose, or cause to be disclosed, the custodial parent's place of residence, place of employment, or the child's school, unless the court finds that the disclosure would be in the best interest of the child.

SEC. 2. Section 362.1 of the Welfare and Institutions Code is amended to read:

362.1. In order to maintain ties between the parent or guardian and any siblings and the child, and to provide information relevant to deciding if, and when, to return a child to the custody of his or her parent or guardian, or to encourage or suspend sibling interaction, any order placing a child in foster care, and ordering reunification services, shall provide as follows:

(a) (1) Subject to paragraph (2), for visitation between the parent or guardian and the child. Visitation shall be as frequent as possible, consistent with the well-being of the child.

(2) No visitation order shall jeopardize the safety of the child. To protect the safety of the child, the court may keep the child's address confidential. If the parent of the child has been convicted of murder in the first degree, as defined in Section 189 of the Penal Code, and the victim of the murder was the other parent of the child, the court shall order visitation between the child and the parent only if that order would be consistent with Section 3030 of the Family Code.

(b) For visitation between the child and any siblings, or for the suspension of interaction between the child and any siblings, pursuant to subdivision (b) of Section 16002, if the court notes in the order the reasons for its determination that sibling interaction is detrimental to the child.

SEC. 3. This act shall become operative only if Assembly Bill 2745 is also enacted and becomes effective on or before January 1, 1999.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 3030 of the Family Code proposed by both this bill and AB 1645. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 3030 of the Family Code, and (3) this bill is enacted after AB 1645, in which case Section 1 of this bill shall not become operative.

CHAPTER 706

An act to amend Section 372 of, and to add Sections 374 and 374.5 to, the Code of Civil Procedure, relating to minors, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 372 of the Code of Civil Procedure is amended to read:

372. (a) When a minor, an incompetent person, or a person for whom a conservator has been appointed is a party, that person shall appear either by a guardian or conservator of the estate or by a guardian ad litem appointed by the court in which the action or proceeding is pending, or by a judge thereof, in each case. A guardian ad litem may be appointed in any case when it is deemed by the court in which the action or proceeding is prosecuted, or by a judge thereof, expedient to appoint a guardian ad litem to represent the minor, incompetent person, or person for whom a conservator has been appointed, notwithstanding that the person may have a guardian or conservator of the estate and may have appeared by the guardian or conservator of the estate. The guardian or conservator of the estate or guardian ad litem so appearing for any minor, incompetent

person, or person for whom a conservator has been appointed shall have power, with the approval of the court in which the action or proceeding is pending, to compromise the same, to agree to the order or judgment to be entered therein for or against the ward or conservatee, and to satisfy any judgment or order in favor of the ward or conservatee or release or discharge any claim of the ward or conservatee pursuant to that compromise. Any money or other property to be paid or delivered pursuant to the order or judgment for the benefit of a minor, incompetent person, or person for whom a conservator has been appointed shall be paid and delivered as provided in Chapter 4 (commencing with Section 3600) of Part 8 of Division 4 of the Probate Code.

Where reference is made in this section to "incompetent person," such reference shall be deemed to include "a person for whom a conservator may be appointed."

Nothing in this section, or in any other provision of this code, the Civil Code, the Family Code, or the Probate Code is intended by the Legislature to prohibit a minor from exercising an intelligent and knowing waiver of his or her constitutional rights in any proceedings under the Juvenile Court Law, Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code.

(b) (1) Notwithstanding subdivision (a), a minor 12 years of age or older may appear in court without a guardian, counsel, or guardian ad litem, for the purpose of requesting or opposing a request for any of the following:

(A) An injunction or temporary restraining order or both to prohibit harassment pursuant to Section 527.6.

(B) An injunction or temporary restraining order or both against violence or a credible threat of violence in the workplace pursuant to Section 527.8.

(C) A protective order pursuant to Division 10 (commencing with Section 6200) of the Family Code.

(D) A protective order pursuant to Sections 7710 and 7720 of the Family Code.

The court may, either upon motion or in its own discretion, and after considering reasonable objections by the minor to the appointment of specific individuals, appoint a guardian ad litem to assist the minor in obtaining or opposing the order, provided that the appointment of the guardian ad litem does not delay the issuance or denial of the order being sought. In making the determination concerning the appointment of a particular guardian ad litem, the court shall consider whether the minor and the guardian have divergent interests.

(2) For purposes of this subdivision only, upon the issuance of an order pursuant to paragraph (1), if the minor initially appeared in court seeking an order without a guardian or guardian ad litem, and if the minor is residing with a parent or guardian, the court shall send a copy of the order to at least one parent or guardian designated by

the minor, unless, in the discretion of the court, notification of a parent or guardian would be contrary to the best interest of the minor. The court is not required to send the order to more than one parent or guardian.

(3) The Judicial Council shall adopt forms by July 1, 1999, to facilitate the appointment of a guardian ad litem pursuant to this subdivision.

SEC. 2. Section 374 is added to the Code of Civil Procedure, to read:

374. (a) A minor under 12 years of age, accompanied by a duly appointed and acting guardian ad litem, shall be permitted to appear in court without counsel for the limited purpose of requesting or opposing a request for (1) an injunction or temporary restraining order or both to prohibit harassment pursuant to Section 527.6, (2) an injunction or temporary restraining order or both against violence or a credible threat of violence in the workplace pursuant to Section 527.8, (3) a protective order pursuant to Division 10 (commencing with Section 6200) of the Family Code, or (4) a protective order pursuant to Sections 7710 and 7720 of the Family Code.

(b) In making the determination concerning appointment of a particular guardian ad litem for purposes of this section, the court shall consider whether the minor and the guardian have divergent interests.

(c) The Judicial Council shall adopt forms by July 1, 1999, to implement this section. The forms shall be designed to facilitate the appointment of the guardian ad litem for purposes of this section.

SEC. 3. Section 374.5 is added to the Code of Civil Procedure, to read:

374.5. A proceeding initiated by or brought against a minor for any of the injunctions or orders described in paragraph (1) of subdivision (b) of Section 372 or subdivision (a) of Section 374 shall be heard in the court assigned to hear those matters; except that, if the minor bringing the action or against whom the action is brought has previously been adjudged a dependent child or a ward of the juvenile court, the matter shall be heard in the juvenile court having jurisdiction over the minor.

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 ensure that the courts may promptly issue and enforce protective and restraining orders with respect to minors who are victims or perpetrators of violence, it is necessary that this act take effect immediately.

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CHAPTER 707

An act to amend Section 1109 of the Evidence Code, to amend Section 6380 of the Family Code, and to amend Section 1203.097 of the Penal Code, relating to domestic violence.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 1109 of the Evidence Code is amended to read:

1109. (a) Except as provided in subdivision (e), in a criminal action in which the defendant is accused of an offense involving domestic violence, evidence of the defendant's commission of other domestic violence is not made inadmissible by Section 1101, if the evidence is not inadmissible pursuant to Section 352.

(b) In an action in which evidence is to be offered under this section, the people shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, in compliance with the provisions of Section 1054.7 of the Penal Code.

(c) This section shall not be construed to limit or preclude the admission or consideration of evidence under any other statute or case law.

(d) As used in this section, "domestic violence" has the meaning set forth in Section 13700 of the Penal Code.

(e) Evidence of acts occurring more than 10 years before the charged offense is inadmissible under this section, unless the court determines that the admission of this evidence is in the interest of justice.

SEC. 2. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Protective Order Registry, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based

upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to domestic violence pursuant to Section 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective order issued by the court of another state, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

(8) The terms and conditions of any restrictions on the ownership or possession of firearms.

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and,

if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, which local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge.

(h) For the purposes of this part, "electronic transmission" shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

SEC. 2.1. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel, or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Protective Order Registry, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data. All data with respect to criminal court protective orders issued under subdivision (g) of Section 136.2 of the Penal Code shall be transmitted by the court or

its designee within one business day to law enforcement personnel by either one of the following methods:

(1) Transmitting a physical copy of the order to a local law enforcement agency authorized by the Department of Justice to enter orders into CLETS.

(2) With the approval of the Department of Justice, entering the order into CLETS directly.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to domestic violence pursuant to Section 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective order issued by the court of another state, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

(8) The terms and conditions of any restrictions on the ownership or possession of firearms.

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer

who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, which local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge.

(h) For the purposes of this part, "electronic transmission" shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

SEC. 2.2. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Protective Order Registry, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and

those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to domestic violence pursuant to Section 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective order issued by the court of another state, tribe, or territory, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

(8) The terms and conditions of any restrictions on the ownership or possession of firearms.

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, which local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge. The informational packet shall also contain a statement that the protective order is enforceable in any state, territory, or reservation, and general information about agencies in other jurisdictions that may be contacted regarding enforcement of an order issued by a court of this state.

(h) For the purposes of this part, "electronic transmission" shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

SEC. 2.3. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Protective Order Registry, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to harassment or domestic violence pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective order issued by the court of another state, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

(8) The terms and conditions of any restrictions on the ownership or possession of firearms.

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks

and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, that local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge.

(h) For the purposes of this part, "electronic transmission" shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

SEC. 2.4. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel, or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Protective Order Registry, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data. All data with respect to criminal court protective orders issued under subdivision (g) of Section 136.2 of the Penal Code shall be transmitted by the court or its designee within one business day to law enforcement personnel by either one of the following methods:

(1) Transmitting a physical copy of the order to a local law enforcement agency authorized by the Department of Justice to enter orders into CLETS.

(2) With the approval of the Department of Justice, entering the order into CLETS directly.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to domestic violence pursuant to Section 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective order issued by the court of another state, tribe, or territory, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

(8) The terms and conditions of any restrictions on the ownership or possession of firearms.

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective

order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, which local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge. The informational packet shall also contain a statement that the protective order is enforceable in any state, territory, or reservation, and general information about agencies in other jurisdictions that may be contacted regarding enforcement of an order issued by a court of this state.

(h) For the purposes of this part, "electronic transmission" shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

SEC. 2.5. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Protective Order Registry, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based

upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to harassment or domestic violence pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective order issued by the court of another state, tribe, or territory, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

(8) The terms and conditions of any restrictions on the ownership or possession of firearms.

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and,

if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, that local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge. The informational packet shall also contain a statement that the protective order is enforceable in any state, territory, or reservation, and general information about agencies in other jurisdictions that may be contacted regarding enforcement of an order issued by a court of this state.

(h) For the purposes of this part, "electronic transmission" shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

SEC. 2.6. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel, or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Protective Order Registry, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and

those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data. All data with respect to criminal court protective orders issued under subdivision (g) of Section 136.2 of the Penal Code shall be transmitted by the court or its designee within one business day to law enforcement personnel by either one of the following methods:

(1) Transmitting a physical copy of the order to a local law enforcement agency authorized by the Department of Justice to enter orders into CLETS.

(2) With the approval of the Department of Justice, entering the order into CLETS directly.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to harassment or domestic violence pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective order issued by the court of another state, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

(8) The terms and conditions of any restrictions on the ownership or possession of firearms.

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also

be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, that local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge.

(h) For the purposes of this part, ''electronic transmission'' shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

SEC. 2.7. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel, or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Protective Order Registry, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department

of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data. All data with respect to criminal court protective orders issued under subdivision (g) of Section 136.2 of the Penal Code shall be transmitted by the court or its designee within one business day to law enforcement personnel by either one of the following methods:

(1) Transmitting a physical copy of the order to a local law enforcement agency authorized by the Department of Justice to enter orders into CLETS.

(2) With the approval of the Department of Justice, entering the order into CLETS directly.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to harassment or domestic violence pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective order issued by the court of another state, tribe, or territory, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

(8) The terms and conditions of any restrictions on the ownership or possession of firearms.

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be

informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, that local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge. The informational packet shall also contain a statement that the protective order is enforceable in any state, territory, or reservation, and general information about agencies in other jurisdictions that may be contacted regarding enforcement of an order issued by a court of this state.

(h) For the purposes of this part, "electronic transmission" shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

SEC. 3. Section 1203.097 of the Penal Code is amended to read:

1203.097. (a) If a person is granted probation for a crime in which the victim is a person defined in Section 6211 of the Family Code, the terms of probation shall include all of the following:

(1) A minimum period of probation of 36 months, which may include a period of summary probation as appropriate.

(2) A criminal court protective order protecting the victim from further acts of violence, threats, stalking, sexual abuse, and harassment, and, if appropriate, containing residence exclusion or stay-away conditions.

(3) Notice to the victim of the disposition of the case.

(4) Booking the defendant within one week of sentencing if the defendant has not already been booked.

(5) The defendant shall pay a minimum of a two-hundred-dollar ($200) payment to be disbursed as specified in this paragraph. If, after a hearing in court on the record, the court finds that the defendant does not have the ability to pay, the court may reduce or waive this fee.

Out of moneys deposited with the county treasurer pursuant to this section, one-third shall be retained by counties and deposited in the domestic violence programs special fund created pursuant to Section 18305 of the Welfare and Institutions Code to be expended for the purposes of Chapter 5 (commencing with Section 18290) of Part 6 of Division 9 of the Welfare and Institutions Code. The remainder shall be transferred, once a month, to the Controller for deposit in equal amounts in the Domestic Violence Restraining Order Reimbursement Fund and in the Domestic Violence Training and Education Fund, which are hereby created, in an amount equal to two-thirds of funds collected during the preceding month. Moneys deposited into these funds to this section shall be available upon appropriation by the Legislature and shall be distributed each fiscal year as follows:

(A) Funds from the Domestic Violence Restraining Order Reimbursement Fund shall be distributed to local law enforcement or other criminal justice agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code, based on the annual notification from the Department of Justice of the number of restraining orders issued and registered in the state domestic violence restraining order registry maintained by the Department of Justice, for the development and maintenance of the domestic violence restraining order data bank system.

(B) Funds from the Domestic Violence Training and Education Fund shall support statewide training and education program to increase public awareness of domestic violence and to improve the scope and quality of services provided to the victims of domestic violence. Grants to support this program shall be awarded on a competitive basis and be administered by the State Department of Health Services, in consultation with the statewide domestic violence coalition, which is eligible to receive funding under this section.

(6) Successful completion of a batterer's program, as defined in subdivision (c), or if none is available, another appropriate counseling program designated by the court, for a period not less than one year with periodic progress reports by the program to the

court every three months or less and weekly sessions of a minimum of two hours classtime duration.

(7) (A) (i) The court shall order the defendant to comply with all probation requirements, including the requirements to attend counseling, keep all program appointments, and pay program fees based upon the ability to pay.

(ii) The terms of probation for offenders shall not be lifted until all reasonable fees due to the counseling program have been paid in full, but in no case shall probation be extended beyond the term provided in subdivision (a) of Section 1203.1. If the court finds that the defendant does not have the ability to pay the fees based on the defendant's changed circumstances, the court may reduce or waive the fees.

(B) Upon request by the batterer's program, the court shall provide the defendant's arrest report, prior incidents of violence, and treatment history to the program.

(8) The court also shall order the defendant to perform a specified amount of appropriate community service, as designated by the court. The defendant shall present the court with proof of completion of community service and the court shall determine if the community service has been satisfactorily completed. If sufficient staff and resources are available, the community service shall be performed under the jurisdiction of the local agency overseeing a community service program.

(9) If the program finds that the defendant is unsuitable, the program shall immediately contact the probation department or the court. The probation department or court shall either recalendar the case for hearing or refer the defendant to an appropriate alternative batterer's program.

(10) (A) Upon recommendation of the program, a court shall require a defendant to participate in additional sessions throughout the probationary period, unless it finds that it is not in the interests of justice to do so, states its reasons on the record, and enters them into the minutes. In deciding whether the defendant would benefit from more sessions, the court shall consider whether any of the following conditions exist:

(i) The defendant has been violence free for a minimum of six months.

(ii) The defendant has cooperated and participated in the batterer's program.

(iii) The defendant demonstrates an understanding of and practices positive conflict resolution skills.

(iv) The defendant blames, degrades, or has committed acts that dehumanize the victim or puts at risk the victim's safety, including, but not limited to, molesting, stalking, striking, attacking, threatening, sexually assaulting, or battering the victim.

(v) The defendant demonstrates an understanding that the use of coercion or violent behavior to maintain dominance is unacceptable in an intimate relationship.

(vi) The defendant has made threats to harm anyone in any manner.

(vii) The defendant has complied with applicable requirements under paragraph (6) of subdivision (c) or subparagraph (C) to receive alcohol counseling, drug counseling, or both.

(viii) The defendant demonstrates acceptance of responsibility for the abusive behavior perpetrated against the victim.

(B) The program shall immediately report any violation of the terms of the protective order, including any new acts of violence or failure to comply with the program requirements, to the court, the prosecutor, and, if formal probation has been ordered, to the probation department. The probationer shall file proof of enrollment in a batterer's program with the court within 30 days of conviction.

(C) Concurrent with other requirements under this section, in addition to, and not in lieu of, the batterer's program, and unless prohibited by the referring court, the probation department or the court may make provisions for a defendant to use his or her resources to enroll in a chemical dependency program or to enter voluntarily a licensed chemical dependency recovery hospital or residential treatment program that has a valid license issued by the state to provide alcohol or drug services to receive program participation credit, as determined by the court. The probation department shall document evidence of this hospital or residential treatment participation in the defendant's program file.

(11) The conditions of probation may include, in lieu of a fine, but not in lieu of the fund payment required under paragraph (5), one or more of the following requirements:

(A) That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars ($5,000).

(B) That the defendant reimburse the victim for reasonable expenses that the court finds are the direct result of the defendant's offense.

For any order to pay a fine, to make payments to a battered women's shelter, or to pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. Determination of a defendant's ability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating lack of his or her ability to pay. Express findings by the court as to the factors bearing on the amount of the fine shall not be required. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property shall not be used

to discharge the liability of the offending spouse for restitution to the injured spouse, as required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse, until all separate property of the offending spouse is exhausted.

(12) If it appears to the prosecuting attorney, the court, or the probation department that the defendant is performing unsatisfactorily in the assigned program, is not benefiting from counseling, or has engaged in criminal conduct, upon request of the probation officer, the prosecuting attorney, or on its own motion, the court, as a priority calendar item, shall hold a hearing to determine whether further sentencing should proceed. The court may consider factors, including, but not limited to, any violence by the defendant against the former or a new victim while on probation and noncompliance with any other specific condition of probation. If the court finds that the defendant is not performing satisfactorily in the assigned program, is not benefiting from the program, has not complied with a condition of probation, or has engaged in criminal conduct, the court shall terminate the defendant's participation in the program and shall proceed with further sentencing.

(b) If a person is granted formal probation for a crime in which the victim is a person defined in Section 6211 of the Family Code, in addition to the terms specified in subdivision (a), all of the following shall apply:

(1) The probation department shall make an investigation and take into consideration the defendant's age, medical history, employment and service records, educational background, community and family ties, prior incidents of violence, police report, treatment history, if any, demonstrable motivation, and other mitigating factors in determining which batterer's program would be appropriate for the defendant. This information shall be provided to the batterer's program if it is requested. The probation department shall also determine which community programs the defendant would benefit from and which of those programs would accept the defendant. The probation department shall report its findings and recommendations to the court.

(2) The court shall advise the defendant that the failure to report to the probation department for the initial investigation, as directed by the court, or the failure to enroll in a specified program, as directed by the court or the probation department, shall result in possible further incarceration. The court, in the interests of justice, may relieve the defendant from the prohibition set forth in this subdivision based upon the defendant's mistake or excusable neglect. Application for this relief shall be filed within 20 court days of the missed deadline. This time limitation may not be extended. A copy of any application for relief shall be served on the office of the prosecuting attorney.

(3) After the court orders the defendant to a batterer's program, the probation department shall conduct an initial assessment of the defendant, including, but not limited to, all of the following:

(A) Social, economic, and family background.

(B) Education.

(C) Vocational achievements.

(D) Criminal history.

(E) Medical history.

(F) Substance abuse history.

(G) Consultation with the probation officer.

(H) Verbal consultation with the victim, only if the victim desires to participate.

(I) Assessment of the future probability of the defendant committing murder.

(4) The probation department shall attempt to notify the victim regarding the requirements for the defendant's participation in the batterer's program, as well as regarding available victim resources. The victim also shall be informed that attendance in any program does not guarantee that an abuser will not be violent.

(c) The court or the probation department shall refer defendants only to batterers' programs that follow standards outlined in paragraph (1), which may include, but are not limited to, lectures, classes, group discussions, and counseling. The probation department shall design and implement an approval and renewal process for batterer's programs and shall solicit input from criminal justice agencies and domestic violence victim advocacy programs.

(1) The goal of a batterer's program under this section shall be to stop domestic violence. A batterer's program shall consist of the following components:

(A) Strategies to hold the defendant accountable for the violence in a relationship, including, but not limited to, providing the defendant with a written statement that the defendant shall be held accountable for acts or threats of domestic violence.

(B) A requirement that the defendant participate in ongoing same-gender group sessions.

(C) An initial intake that provides written definitions to the defendant of physical, emotional, sexual, economic, and verbal abuse, and the techniques for stopping these types of abuse.

(D) Procedures to inform the victim regarding the requirements for the defendant's participation in the intervention program as well as regarding available victim resources. The victim also shall be informed that attendance in any program does not guarantee that an abuser will not be violent.

(E) A requirement that the defendant attend group sessions free of chemical influence.

(F) Educational programming that examines, at a minimum, gender roles, socialization, the nature of violence, the dynamics of power and control, and the effects of abuse on children and others.

(G) A requirement that excludes any couple counseling or family counseling, or both.

(H) Procedures that give the program the right to assess whether or not the defendant would benefit from the program and refuse to enroll the defendant if it is determined the defendant would not benefit from the program, so long as the refusal is not because of the defendant's inability to pay. If possible, the program shall suggest an appropriate alternative program.

(I) Program staff who, to the extent possible, have specific knowledge regarding, but not limited to, spousal abuse, child abuse, sexual abuse, substance abuse, the dynamics of violence and abuse, the law, and procedures of the legal system.

(J) Program staff who are encouraged to utilize the expertise, training, and assistance of local domestic violence centers.

(K) A requirement that the defendant enter into a written agreement with the program that shall include an outline of the contents of the program, the attendance requirements, the requirement to attend group sessions free of chemical influence, and a statement that the defendant may be removed from the program if it is determined that the defendant is not benefiting from the program or is disruptive to the program.

(L) A requirement that the defendant sign a confidentiality statement prohibiting disclosure of any information obtained through participating in the program or during group sessions regarding other participants in the program.

(M) Program content that provides cultural and ethnic sensitivity.

(N) A requirement of a written referral from the court or probation department prior to permitting the defendant to enroll in the program. The written referral shall state the number of minimum sessions required by the court.

(O) Procedures for submitting to the probation department all of the following uniform written responses:

(i) Proof of enrollment, to be submitted to the court and the probation department and to include the fee determined to be charged to the defendant, based upon the ability to pay, for each session.

(ii) Periodic progress reports that include attendance, fee payment history, and program compliance.

(iii) Final evaluation that includes the program's evaluation of the defendant's progress, using the criteria set forth in paragraph (4) of subdivision (a) and recommendation for either successful or unsuccessful termination or continuation in the program.

(P) A sliding fee schedule based on the defendant's ability to pay. The batterer's program shall develop and utilize a sliding fee scale that recognizes both the defendant's ability to pay and the necessity of programs to meet overhead expenses. An indigent defendant may negotiate a deferred payment schedule, but shall pay a nominal fee, if the defendant has the ability to pay the nominal fee. Upon a hearing

and a finding by the court that the defendant does not have the financial ability to pay the nominal fee, the court shall waive this fee. The payment of the fee shall be made a condition of probation if the court determines the defendant has the present ability to pay the fee. The fee shall be paid during the term of probation unless the program sets other conditions. The acceptance policies shall be in accordance with the scaled fee system.

(2) The court shall refer persons only to batterer programs that have been approved by the probation department pursuant to paragraph (5). The probation department shall do all of the following:

(A) Provide for the issuance of a provisional approval, provided that the applicant is in substantial compliance with applicable laws and regulations and an urgent need for approval exists. A provisional approval shall be considered an authorization to provide services and shall not be considered a vested right.

(B) If the probation department determines that a program is not in compliance with standards set by the department, the department shall provide written notice of the noncompliant areas to the program. The program shall submit a written plan of corrections within 14 days from the date of the written notice on noncompliance. A plan of correction shall include, but not be limited to, a description of each corrective action and timeframe for implementation. The department shall review and approve all or any part of the plan of correction and notify the program of approval or disapproval in writing. If the program fails to submit a plan of correction or fails to implement the approved plan of correction, the department shall consider whether to revoke or suspend approval and, upon revoking or suspending approval, shall have the option to cease referrals of defendants under this section.

(3) No program, regardless of its source of funding, shall be approved unless it meets all of the following standards:

(A) The establishment of guidelines and criteria for education services, including standards of services that may include lectures, classes, and group discussions.

(B) Supervision of the defendant for the purpose of evaluating the person's progress in the program.

(C) Adequate reporting requirements to ensure that all persons who, after being ordered to attend and complete a program, may be identified for either failure to enroll in, or failure to successfully complete, the program or for the successful completion of the program as ordered. The program shall notify the court and the probation department in writing within the period of time and in the manner specified by the court of any person who fails to complete the program. Notification shall be given if the program determines that the defendant is performing unsatisfactorily or if the defendant is not benefiting from the education, treatment, or counseling.

(D) No victim shall be compelled to participate in a program or counseling and no program may condition a defendant's enrollment on participation by the victim.

(4) In making referrals of indigent defendants to approved batterer programs, the probation department shall apportion these referrals evenly among the approved programs.

(5) The probation department shall have the sole authority to approve a batterer's program for probation. The program shall be required to obtain only one approval but shall renew that approval annually.

(A) The procedure for the approval of a new or existing program shall include all of the following:

(i) The completion of a written application containing necessary and pertinent information describing the applicant program.

(ii) The demonstration by the program that it possesses adequate administrative and operational capability to operate a batterer's treatment program. The program shall provide documentation to prove that the program has conducted batterer's programs for at least one year prior to application. This requirement may be waived under subparagraph (A) of paragraph (2), if there is no existing batterer's program in the city, county, or city and county.

(iii) The onsite review of the program, including monitoring of a session to determine that the program adheres to applicable statutes and regulations.

(iv) The payment of the approval fee.

(B) The probation department shall fix a fee for approval not to exceed two hundred fifty dollars ($250) and for approval renewal not to exceed two hundred fifty dollars ($250) every year in an amount sufficient to cover its cost in administering the approval process under this section. No fee shall be charged for the approval of local governmental entities.

(C) The probation department has the sole authority to approve the issuance, denial, suspension, or revocation of approval and to cease new enrollments or referrals to a batterer's program under this section. The probation department shall review information relative to a program's performance or failure to adhere to standards, or both. The probation department may suspend or revoke any approval issued under this subdivision or deny an application to renew an approval or to modify the terms and conditions of approval, based on grounds established by probation, including, but not limited to, any of the following:

(i) Violation of this section by any person holding approval or by a program employee in a program under this section.

(ii) Misrepresentation of any material fact in obtaining the approval.

(6) For defendants who are chronic users or serious abusers of drugs or alcohol, standard components in the program shall include concurrent counseling for substance abuse and violent behavior, and

in appropriate cases, detoxification and abstinence from the abused substance.

(7) The program shall conduct an exit conference that reflects the defendant's progress during the defendant's participation in the batterer's program.

SEC. 4. (a) Section 2.1 of this bill incorporates amendments to Section 6380 of the Family Code proposed by both this bill and AB 1531. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 6380 of the Family Code, (3) AB 2177 and AB 2801 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1531, in which case Sections 2, 2.2, 2.3, 2.4, 2.5, 2.6, and 2.7 of this bill shall not become operative.

(b) Section 2.2 of this bill incorporates amendments to Section 6380 of the Family Code proposed by this bill and AB 2177. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 6380 of the Family Code, and (3) AB 1531 and AB 2801 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 2177, in which case Sections 2, 2.1, 2.3, 2.4, 2.5, 2.6, and 2.7 of this bill shall not become operative.

(c) Section 2.3 of this bill incorporates amendments to Section 6380 of the Family Code proposed by this bill and AB 2801. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 6380 of the Family Code, and (3) AB 1531 and AB 2177 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 2801, in which case Sections 2, 2.1, 2.2, 2.4, 2.5, 2.6, and 2.7 of this bill shall not become operative.

(d) Section 2.4 of this bill incorporates amendments to Section 6380 of the Family Code proposed by this bill and AB 1531 and AB 2177. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1999, (2) all three bills amend Section 6380 of the Family Code, and (3) AB 2801 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1531 and AB 2177, in which case Sections 2, 2.1, 2.2, 2.3, 2.5, 2.6, and 2.7 of this bill shall not become operative.

(e) Section 2.5 of this bill incorporates amendments to Section 6380 of the Family Code proposed by this bill and AB 2177 and AB 2801. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1999, (2) all three bills amend Section 6380 of the Family Code, and (3) AB 1531 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2177 and AB 2801, in which case Sections 2, 2.1, 2.2, 2.3, 2.4, 2.6, and 2.7 of this bill shall not become operative.

(f) Section 2.6 of this bill incorporates amendments to Section 6380 of the Family Code proposed by this bill, AB 1531, and AB 2801. It shall only become operative if (1) all three bills are enacted and become

effective on or before January 1, 1999, (2) all three bills amend Section 6380 of the Family Code, and (3) AB 2177 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1531 and AB 2801, in which case Sections 2, 2.1, 2.2, 2.3, 2.4, 2.5, and 2.7 of this bill shall not become operative.

(g) Section 2.7 of this bill incorporates amendments to Section 6380 of the Family Code proposed by this bill and AB 1531, AB 2177, and AB 2801. It shall only become operative if (1) all four bills are enacted and become effective on or before January 1, 1999, (2) all four bills amend Section 6380 of the Family Code, and (3) this bill is enacted after AB 1531, AB 2177, and AB 2801, in which case Sections 2, 2.1, 2.2, 2.3, 2.4, 2.5, and 2.6 of this bill shall not become operative.

CHAPTER 708

An act to amend Section 52891 of, to repeal Section 6043.2 of, and to add Article 12 (commencing with Section 52981) to Chapter 4 of Division 18 of, the Food and Agricultural Code, relating to agriculture.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 6043.2 of the Food and Agricultural Code is repealed.

SEC. 2. Section 52891 of the Food and Agricultural Code is amended to read:

52891. The powers and duties of the board shall include, but not be limited to, all of the following:

(a) Establish a separate Acala and Pima quality standard. When determining each standard, the board shall consider fiber length, strength, uniformity, micronaire, seed quality, productivity, resistance to disease, including verticillium wilt, and spinning characteristics.

(b) Annually review test data and approve for release and planting within the district, cotton varieties that meet the existing Acala or Pima quality standard but are superior in some meaningful respect, as determined by the board, and that have qualities generally recognized by the cotton industry to be essential factors in producing that cotton within the district, or significant area within the district.

(c) Conduct or commission tests for cotton production and quality evaluation in accordance with procedures to be adopted pursuant to Section 52902, and assess fees necessary for administering those tests.

(d) Conduct periodic referendums, as specified in this chapter, regarding the continuation of the district. A referendum shall also be conducted whenever the board proposes substantive changes in the Acala or Pima quality standard.

(e) Require all cotton varieties approved for release for planting, and produced in the district, to contain the word "Acala" or "Pima" in labeling and all lint to be marketed as "SJV Acala" or "SJV Pima."

(f) Recommend to the secretary on all matters pertaining to this chapter including, but not limited to, the program for enforcing this chapter and the setting of an appropriate seed assessment rate necessary for the administration of this chapter.

SEC. 3. Article 12 (commencing with Section 52981) is added to Chapter 4 of Division 18 of the Food and Agricultural Code, to read:

Article 12. Growing of Nonapproved Varieties

52981. (a) Notwithstanding any other provision of this chapter, nonapproved varieties of cotton may be grown in the district, subject to regulations proposed by the board and adopted by the department.

(b) The department shall adopt regulations that ensure that the growing of nonapproved varieties of cotton do not adversely affect the quality of Acala and Pima cotton approved to be grown in the district.

52982. Article 9 (commencing with Section 52941), Article 10 (commencing with Section 52961), and Article 11 (commencing with Section 52971) apply to this article, except that the secretary may increase the assessment specified in Article 9 (commencing with Section 52941) in the amount necessary to enforce the regulations adopted by the department for nonapproved varieties of cotton grown in the district pursuant to this article, in order to ensure the quality of Acala and Pima cotton grown in the district.

CHAPTER 709

An act to add Chapter 5 (commencing with Section 120480) to Part 2 of Division 105 of the Health and Safety Code, relating to disease prevention.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. It is the intent of the Legislature in enacting this act to join in the fight against valley fever by supporting research and

development of a vaccine for this respiratory illness, which, if left untreated or mistreated, can lead to serious complications or death.

SEC. 2. The Legislature finds and declares all of the following:

(a) The Valley Fever Vaccine Project has conducted research on a valley fever vaccine for a number of years.

(b) A strong public-private partnership, consisting of the federal government, the state, Kern County, the California Health Foundation, the Rotary, and the private sector, has been forged to accelerate a vaccine development.

(c) During the 1997–98 fiscal year, the state became a full partner in this effort by funding a contract with the California State University, Bakersfield Foundation.

SEC. 3. Chapter 5 (commencing with Section 120480) is added to Part 2 of Division 105 of the Health and Safety Code, to read:

CHAPTER 5. VACCINE DEVELOPMENT

120480. (a) Funds appropriated in the Budget Act of 1998 to the State Department of Health Services for the purpose of valley fever (coccidioidomycosis) vaccine research shall be used to continue and expand the current research effort being conducted by the Valley Fever Vaccine Project. This augmentation shall not be subject to review by the Department of General Services.

(b) The department shall augment and amend the existing contract to support research into the development of a vaccine to protect against valley fever. The department may contract on a sole source basis to a nonprofit organization that has provided funding for vaccine research on valley fever. The contract shall require the organization to distribute research grants to support research efforts that are likely to advance the effort to develop a vaccine.

(c) The contractor shall establish an advisory group consisting of persons with relevant expertise in the fields of mycology and vaccine development and a representative from the department. The advisory group shall approve grants for those whose research is likely to advance the effort to develop a safe and effective vaccine. The contractor shall seek advice from the appropriate agencies in the National Institutes of Health and other federal agencies with experience in supporting vaccine research when reviewing the research of those receiving funds under this section. Funding awards shall be made so as to complement financial support provided by the federal government.

(d) The contractor shall provide the department with periodic status reports on the progress of the researchers receiving funds pursuant to this section. The department shall review progress reports from the contractor describing the research progress and plans for future funding and report to the Legislature during the annual review of the budget.

(e) The contract shall require that funding is provided on the condition that, if a valley fever vaccine is developed and successfully marketed, the state shall be reimbursed for the cost of grants made under this section in proportion to the state's contribution to the research and development effort.

SEC. 4. From the funds appropriated in the Budget Act of 1998 to support valley fever vaccine research, the State Department of Health Services may expend up to fifty thousand dollars ($50,000) for the administrative costs related to the program prescribed by this act during the 1998–99 fiscal year.

CHAPTER 710

An act to amend Section 666.5 of, and to add Section 496d to, the Penal Code, relating to theft.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 496d is added to the Penal Code, to read:

496d. (a) Every person who buys or receives any motor vehicle, as defined in Section 415 of the Vehicle Code, any trailer, as defined in Section 630 of the Vehicle Code, any special construction equipment, as defined in Section 565 of the Vehicle Code, or any vessel, as defined in Section 21 of the Harbors and Navigation Code, that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any motor vehicle, trailer, special construction equipment, or vessel from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment in the state prison for 16 months or two or three years or a fine of not more than ten thousand dollars ($10,000), or both, or by imprisonment in a county jail not to exceed one year or a fine of not more than one thousand dollars ($1,000), or both.

(b) For the purposes of this section, the terms "special construction equipment" and "vessel" are limited to motorized vehicles and vessels.

SEC. 2. Section 666.5 of the Penal Code is amended to read:

666.5. (a) Every person who, having been previously convicted of a felony violation of Section 10851 of the Vehicle Code, or felony grand theft involving an automobile, a motor vehicle, as defined in Section 415 of the Vehicle Code, any trailer, as defined in Section 630 of the Vehicle Code, any special construction equipment, as defined in Section 565 of the Vehicle Code, or any vessel, as defined in Section

21 of the Harbors and Navigation Code in violation of former subdivision (d) of Section 487, former subdivision (3) of Section 487, as that section read prior to being amended by Section 4 of Chapter 1125 of the Statutes of 1993, or Section 487h, or of a felony violation of Section 496d of the Penal Code regardless of whether or not the person actually served a prior prison term for those offenses, is subsequently convicted of any of these offenses shall be punished by imprisonment in the state prison for two, three, or four years, or a fine of ten thousand dollars ($10,000), or both the fine and the imprisonment.

(b) For the purposes of this section, the terms "special construction equipment" and "vessel" are limited to motorized vehicles and vessels.

(c) The existence of any fact which would bring a person under subdivision (a) shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

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 711

An act to add and repeal Section 35401.7 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 35401.7 is added to the Vehicle Code, to read:

35401.7. (a) The limitations of access specified in subdivision (d) of Section 35401.5 do not apply to licensed carriers of livestock when those carriers are directly en route to or from a point of loading or

unloading of livestock on the following portions of State Highway Route 101, if travel on those portions is necessary and incidental to the shipment of the livestock:

(1) State Highway Route 101 in Mendocino and Humboldt Counties from its junction with State Highway Route 1 near Leggett north to Benbow.

(2) State Highway Route 101 in Humboldt County from its junction with Louisiana Pacific Road near Trinidad north to Orick.

(b) The exemption allowed under this section does not apply unless all of the following conditions are met:

(1) The length of the truck tractor, in combination with the semitrailer used to transport the livestock, does not exceed a total of 70 feet.

(2) The distance from the kingpin to the rearmost axle of the semitrailer does not exceed 40 feet.

(3) The motor carrier obtains a permit from the Department of Transportation authorizing the transport of the livestock and indicating the approved route of travel and any other related conditions.

(c) The Department of the California Highway Patrol, in consultation with the Department of Transportation, shall conduct a study of the effect that the exemption provided under this section has on public safety. The findings of the study shall be reported to the Legislature on or before July 1, 2000.

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

CHAPTER 712

An act to add Chapter 11.5 (commencing with Section 21800) to Division 8 of the Business and Professions Code, relating to optical discs.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Chapter 11.5 (commencing with Section 21800) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 11.5. OPTICAL DISC IDENTIFICATION

21800. Every person who manufactures an optical disc for commercial purposes shall permanently mark each manufactured optical disc with an identification mark that identifies the name of the

manufacturer and the state in which the optical disc was manufactured.

21801. The identification mark required by this chapter shall be affixed by molding, diestamping, etching, or other permanent method in a manner in which it is clearly visible without the aid of magnification or special devices to read the mark.

21802. For purposes of this chapter, a person manufactures an optical disc for commercial purposes if that person manufactures at least 10 of the same or different optical discs in a 180-day period by storing information on the disc for the purposes of resale by that person or others. For the purposes of this chapter, "manufacturer" means a person who replicates the physical optical disc or produces the master used in any optical disc replication process. It does not include a person who manufactures optical discs for internal use, testing, or review, or a person who manufactures blank optical discs.

21803. For purposes of this chapter, an optical disc is a disc capable of being read by a laser or other light source on which data is stored in digital form. It includes, but is not limited to, discs known as CDs, DVDs, or related mastering source materials.

21804. Except as otherwise provided in this chapter, any manufacturer of optical discs who violates this chapter is guilty of a misdemeanor, and shall be subject to a fine of not less than five hundred dollars ($500) and not more than five thousand dollars ($5,000) for a first offense, and shall be subject to a fine of not less than five thousand dollars ($5,000) nor more than fifty thousand dollars ($50,000) for a second or subsequent offense.

21805. Any person who buys, sells, receives, transfers, or possesses for purposes of sale or rental an optical disc knowing that the identification mark required by this chapter has been removed, defaced, covered, altered, or destroyed, or knowing it was manufactured in California without the required identification mark, or knowing it was manufactured in California with a false identification mark is guilty of a misdemeanor punishable by imprisonment in a county jail for a term not exceeding one year, or by a fine not exceeding ten thousand dollars ($10,000), or by both the fine and imprisonment.

21806. Any person who knowingly removes, defaces, covers, alters, or destroys the identification mark required by this chapter is guilty of a misdemeanor punishable by imprisonment in a county jail for a term not exceeding one year, or by a fine not exceeding ten thousand dollars ($10,000), or by both the fine and imprisonment.

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 713

An act relating to forest resources.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. If two million one hundred thousand dollars ($2,100,000) is appropriated to the Department of Forestry and Fire Protection pursuant to Item 3540-001-0928 of Section 2 of the Budget Act of 1998 to develop and implement measures designed to control the fungus known as "pitch canker" and to perform control work on state and private lands within zones of pitch canker infestation, as designated by the State Board of Forestry, those funds shall be allocated for expenditure by the department in accordance with the following schedule:

(1) On or after January 1, 1999, the sum of three hundred fifty thousand dollars ($350,000) for the 1998–99 fiscal year.

(2) On or after July 1, 1999, the sum of three hundred fifty thousand dollars ($350,000) for the 1999–2000 fiscal year.

(3) On or after July 1, 2000, the sum of three hundred fifty thousand dollars ($350,000) for the 2000–01 fiscal year.

(4) On or after July 1, 2001, the sum of three hundred fifty thousand dollars ($350,000) for the 2001–02 fiscal year.

(5) On or after July 1, 2002, the sum of three hundred fifty thousand dollars ($350,000) for the 2002–03 fiscal year.

(6) On or after July 1, 2003, the sum of three hundred fifty thousand dollars ($350,000) for the 2003–04 fiscal year.

If the amount of funds appropriated by Item 3540-001-0928 of Section 2 of the Budget Act of 1998 is reduced or eliminated pursuant to Section 10 of Article IV of the California Constitution, the amounts allocated pursuant to paragraphs (1) to (6), inclusive, shall be reduced proportionately in relation to the amount of the reduction or elimination.

(b) The Department of Forestry and Fire Protection may use any funds allocated pursuant to subdivision (a) to take various actions to control the pitch canker fungus, including, but not limited to, all of the following:

(1) Prevent transportation of infected plant material from infested areas to uninfested areas. For purposes of this paragraph, infected material includes, but is not limited to, nursery stock, firewood, logs, wood chips, foliage, cones, and seeds that contain evidence of pitch canker infestation.

(2) Establish permanent monitoring plots and develop a Geographical Information System (GIS) data base to assess the present and future distribution and impacts of pitch canker in California.

(3) Incorporate relevant information about pitch canker into landscape, resource management, and conservation plans that are, or will be, developed for native Monterey pine stands and other coastal forest stands throughout California.

(4) Utilize local, native seed when regenerating Monterey pine within native stands.

(5) Develop a broad-based public education program to increase the awareness of the general public about pitch canker, and the potential biological and other impacts of the fungus, which does all the following:

(A) Sets out management guidelines, disease distribution and research updates, wood disposal recommendations, and recognition aids that may be provided to urban and rural foresters, arborists, nurserymen, Christmas tree growers, and other professionals involved in forest preservation and management activities.

(B) Provides information on the importance of controlling pitch canker that may be distributed to city, county, state, and federal representatives and officials.

(C) Recommends actions that may be taken to develop a research program identifying the disease resistance of selected Monterey pine types, and studies on the survival of the pitch canker fungus and its potential insect vectors in wood chips, dead and live branches, and on seed.

CHAPTER 714

An act to add Section 68550 to the Government Code, relating to courts.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 68550 is added to the Government Code, to read:

68550. The Judicial Council shall adopt a rule of court requiring every trial court to adopt, by January 2000, a requirement limiting

jury service to either one trial, or one day on call, per individual, except in those counties which can demonstrate good cause why such a requirement is impractical.

CHAPTER 715

An act to amend Section 91.5 of, and to add and repeal Section 91.7 of, the Streets and Highways Code, relating to highways.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 91.5 of the Streets and Highways Code is amended to read:

91.5. (a) The department may enter into an agreement to accept funds, materials, equipment, or services from any person for maintenance or roadside enhancement of a section of a state highway. The department and the sponsoring person may specify in the agreement the level of maintenance that will be performed.

(b) The director may authorize a courtesy sign. These courtesy signs shall be consistent with existing code provisions and department rules and regulations concerning signs.

SEC. 2. Section 91.7 is added to the Streets and Highways Code, to read:

91.7. (a) Instead of the courtesy sign authorized under subdivision (b) of Section 91.5, the director may authorize a demonstration program providing for the placement of recognition on the sponsored materials, other than safety equipment, or the planting and maintenance by the sponsor of organizational logos created from live plant materials. The planting, materials, and equipment shall be consistent with federal and departmental rules and regulations.

(b) A demonstration program undertaken pursuant to this section may be authorized only in the Counties of Los Angeles and Orange.

(c) The department shall provide a report to the Legislature on or before July 1, 2002, regarding the utilization of the authority provided under this section.

(d) This section shall become inoperative on July 1, 2002, and, as of January 1, 2003, is repealed, unless a later enacted statute that is enacted on or before January 1, 2003, deletes or extends the dates on which it becomes inoperative and is repealed.

CHAPTER 716

An act to add Sections 1339.9 and 1736.7 to the Health and Safety Code, relating to health, and making an appropriation therefor.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 1339.9 is added to the Health and Safety Code, to read:

1339.9. (a) The state department may request and maintain employment information for nurse assistants and direct care staff of intermediate care facilities/developmentally disabled, other than state-operated intermediate care facilities/developmentally disabled that secure criminal record clearances for employees through another method, intermediate care facilities/developmentally disabled-habilitative, or intermediate care facilities/developmentally disabled-nursing.

(b) Within five working days of receipt of a criminal record or information from the Department of Justice pursuant to Section 1338.5, the state department shall notify the licensee and applicant of any criminal convictions.

(c) The state department shall conduct a feasibility study to assess the additional technology requirements necessary to include previous and current employment information on its registry and to make that information available to potential employers. The state department shall report to the Legislature by July 1, 2000, as to the results of the study.

SEC. 2. Section 1736.7 is added to the Health and Safety Code, to read:

1736.7. (a) The state department may request and maintain employment information for home health aides.

(b) Within five working days of receipt of a criminal record or information from the Department of Justice pursuant to Section 1736.6, the state department shall notify the licensee and applicant of any criminal convictions.

(c) The state department shall conduct a feasibility study to assess the additional technology requirements necessary to include previous and current employment information on its registry and to make that information available to potential employers. The state department shall report to the Legislature by July 1, 2000, as to the results of the study.

SEC. 3. The sum of forty-nine thousand dollars ($49,000) is hereby appropriated from the General Fund to the State Department of Health Services to conduct a feasibility study to

upgrade its registry as described in Section 1736.7 of the Health and Safety Code.

CHAPTER 717

An act to amend and repeal Section 1316.5 of the Health and Safety Code, relating to health facilities.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 1316.5 of the Health and Safety Code, as amended by Section 1 of Chapter 826 of the Statutes of 1996, is amended to read:

1316.5. (a) (1) Each health facility owned and operated by the state offering care or services within the scope of practice of a psychologist shall establish rules and medical staff bylaws that include provisions for medical staff membership and clinical privileges for clinical psychologists within the scope of their licensure as psychologists, subject to the rules and medical staff bylaws governing medical staff membership or privileges as the facility shall establish. The rules and regulations shall not discriminate on the basis of whether the staff member holds an M.D., D.O., D.D.S., D.P.M., or doctoral degree in psychology within the scope of the member's respective licensure. Each of these health facilities owned and operated by the state shall establish a staff comprised of physicians and surgeons, dentists, podiatrists, psychologists, or any combination thereof, that shall regulate the admission, conduct suspension, or termination of the staff appointment of psychologists employed by the health facility.

(2) With regard to the practice of psychology in health facilities owned and operated by the state offering care or services within the scope of practice of a psychologist, medical staff status shall include and provide for the right to pursue and practice full clinical privileges for holders of a doctoral degree of psychology within the scope of their respective licensure. These rights and privileges shall be limited or restricted only upon the basis of an individual practitioner's demonstrated competence. Competence shall be determined by health facility rules and medical staff bylaws that are necessary and are applied in good faith, equally and in a nondiscriminatory manner, to all practitioners, regardless of whether they hold an M.D., D.O., D.D.S., D.P.M., or doctoral degree in psychology.

(3) Nothing in this subdivision shall be construed to require a health facility owned and operated by the state to offer a specific health service or services not otherwise offered. If a health service is

offered in such a health facility that includes provisions for medical staff membership and clinical privileges for clinical psychologists, the facility shall not discriminate between persons holding an M.D., D.O., D.D.S., D.P.M., or doctoral degree in psychology who are authorized by law to perform the service within the scope of the person's respective licensure.

(4) The rules and medical staff bylaws of a health facility owned and operated by the state that include provisions for medical staff membership and clinical privileges for, medical staff and duly licensed clinical psychologists shall not discriminate on the basis of whether the staff member holds an M.D., D.O., D.D.S., D.P.M., or doctoral degree in psychology within the scope of the member's respective licensure. The health facility staff of these health facilities who process, review, evaluate, and determine qualifications for staff privileges for medical staff shall include, if possible, staff members who are clinical psychologists.

(b) (1) The rules of a health facility not owned or operated by this state may enable the appointment of clinical psychologists on the terms and conditions that the facility shall establish. In these health facilities, clinical psychologists may hold membership and serve on committees of the medical staff and carry professional responsibilities consistent with the scope of their licensure and their competence, subject to the rules of the health facility.

(2) Nothing in this subdivision shall be construed to require a health facility not owned or operated by this state to offer a specific health service or services not otherwise offered. If a health service is offered by a health facility with both licensed physicians and surgeons and clinical psychologists on the medical staff, which both licensed physicians and surgeons and clinical psychologists are authorized by law to perform, the service may be performed by either, without discrimination.

(3) This subdivision shall not prohibit a health facility that is a clinical teaching facility owned or operated by a university operating a school of medicine from requiring that a clinical psychologist have a faculty teaching appointment as a condition for eligibility for staff privileges at that facility.

(4) In any health facility that is not owned or operated by this state that provides staff privileges to clinical psychologists, the health facility staff who process, review, evaluate, and determine qualifications for staff privileges for medical staff shall include, if possible, staff members who are clinical psychologists.

(c) No classification of health facilities by the state department, nor any other classification of health facilities based on quality of service or otherwise, by any person, body, or governmental agency of this state or any subdivision thereof shall be affected by a health facility's provision for use of its facilities by duly licensed clinical psychologists, nor shall any such classification be affected by the subjection of the psychologists to the rules and regulations of the

organized professional staff. No classification of health facilities by any governmental agency of this state or any subdivision thereof pursuant to any law, whether enacted prior or subsequent to the effective date of this section, for the purposes of ascertaining eligibility for compensation, reimbursement, or other benefit for treatment of patients shall be affected by a health facility's provision for use of its facilities by duly licensed clinical psychologists, nor shall any such classification be affected by the subjection of the psychologists to the rules and regulations of the organized professional staff which govern the psychologists' use of the facilities.

(d) "Clinical psychologist," as used in this section, means a psychologist licensed by this state who meets both of the following requirements:

(1) Possesses an earned doctorate degree in psychology from an educational institution meeting the criteria of subdivision (b) of Section 2914 of the Business and Professions Code.

(2) Has not less than two years clinical experience in a multidisciplinary facility licensed or operated by this or another state or by the United States to provide health care, or, is listed in the latest edition of the National Register of Health Service Providers in Psychology, as adopted by the Council for the National Register of Health Service Providers in Psychology.

(e) Nothing in this section is intended to expand the scope of licensure of clinical psychologists. Notwithstanding the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1 of the Government Code), the Public Employment Relations Board is precluded from creating any additional bargaining units for the purpose of exclusive representation of state psychologist employees that might result because of medical staff membership and/or privilege changes for psychologists due to the enactment of provisions by Assembly Bill No. 3141 of the 1995–96 Regular Session.

(f) The State Department of Mental Health, the State Department of Developmental Services, and the Department of Corrections shall report to the Legislature no later than January 1, 2006, on the impact of medical staff membership and privileges for clinical psychologists on quality of care, and on cost-effectiveness issues.

(g) 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. 2. Section 1316.5 of the Health and Safety Code, as added by Section 2 of Chapter 826 of the Statutes of 1996, is amended to read:

1316.5. (a) The rules of a health facility may enable the appointment of clinical psychologists on such terms and conditions as the facility shall establish. In such health facilities, clinical psychologists may hold membership and serve on committees of the medical staff and carry professional responsibilities consistent with

the scope of their licensure and their competence, subject to the rules of the health facility.

Nothing in this section shall be construed to require a health facility to offer a specific health service or services not otherwise offered. If a health service is offered by a health facility with both licensed physicians and surgeons and clinical psychologists on the medical staff, which both licensed physicians and surgeons and clinical psychologists are authorized by law to perform, such service may be performed by either, without discrimination.

This subdivision shall not prohibit a health facility which is a clinical teaching facility owned or operated by a university operating a school of medicine from requiring that a clinical psychologist have a faculty teaching appointment as a condition for eligibility for staff privileges at that facility.

In any health facility providing staff privileges to clinical psychologists, the health facility staff processing, reviewing, evaluating, and determining qualifications for staff privileges for medical staff shall include, if possible, staff members who are clinical psychologists.

(b) No classification of health facilities by the state department, nor any other classification of health facilities based on quality of service or otherwise, by any person, body, or governmental agency of this state or any subdivision thereof shall be affected by a health facility's provision for use of its facilities by duly licensed clinical psychologists, nor shall any such classification be affected by the subjection of the psychologists to the rules and regulations of the organized professional staff. No classification of health facilities by any governmental agency of this state or any subdivision thereof pursuant to any law, whether enacted prior or subsequent to the effective date of this section, for the purposes of ascertaining eligibility for compensation, reimbursement, or other benefit for treatment of patients shall be affected by a health facility's provision for use of its facilities by duly licensed clinical psychologists, nor shall any such classification be affected by the subjection of the psychologists to the rules and regulations of the organized professional staff which govern the psychologists' use of the facilities.

(c) "Clinical psychologist," as used in this section, means a psychologist licensed by this state and (1) who possesses an earned doctorate degree in psychology from an educational institution meeting the criteria of subdivision (b) of Section 2914 of the Business and Professions Code and (2) has not less than two years clinical experience in a multidisciplinary facility licensed or operated by this or another state or by the United States to provide health care, or, is listed in the latest edition of the National Register of Health Service Providers in Psychology, as adopted by the Council for the National Register of Health Service Providers in Psychology.

(d) This section shall become operative on January 1, 2007.

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 718

An act to add Section 20010 to the Elections Code, relating to campaign materials.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. This act shall be known and may be cited as the Truth in Political Advertising Act.

SEC. 2. Section 20010 is added to the Elections Code, to read:

20010. (a) Except as provided in subdivision (b), no person, firm, association, corporation, campaign committee, or organization may, with actual malice, produce, distribute, publish, or broadcast campaign material that contains (1) a picture or photograph of a person or persons into which the image of a candidate for public office is superimposed or (2) a picture or photograph of a candidate for public office into which the image of another person or persons is superimposed. "Campaign material" includes, but is not limited to, any printed matter, advertisement in a newspaper or other periodical, television commercial, or computer image. For purposes of this section, "actual malice" means the knowledge that the image of a person has been superimposed on a picture or photograph to create a false representation, or a reckless disregard of whether or not the image of a person has been superimposed on a picture or photograph to create a false representation.

(b) A person, firm, association, corporation, campaign committee, or organization may produce, distribute, publish, or broadcast campaign material that contains a picture or photograph prohibited by subdivision (a) only if each picture or photograph in the campaign material includes the following statement in the same point size type as the largest point size type used elsewhere in the campaign

material: "This picture is not an accurate representation of fact." The statement shall be immediately adjacent to each picture or photograph prohibited by subdivision (a).

(c) (1) Any registered voter may seek a temporary restraining order and an injunction prohibiting the publication, distribution, or broadcasting of any campaign material in violation of this section. Upon filing a petition under this section, the plaintiff may obtain a temporary restraining order in accordance with Section 527 of the Code of Civil Procedure.

(2) A candidate for public office whose likeness appears in a picture or photograph prohibited by subdivision (a) may bring a civil action against any person, firm, association, corporation, campaign committee, or organization that produced, distributed, published, or broadcast the picture or photograph prohibited by subdivision (a). The court may award damages in an amount equal to the cost of producing, distributing, publishing, or broadcasting the campaign material that violated this section, in addition to reasonable attorney's fees and costs.

(d) (1) This act shall not apply to a holder of a license granted pursuant to the federal Communications Act of 1934 (47 U.S.C. Sec. 151 et seq.) in the performance of the functions for which the license is granted.

(2) This act shall not apply to the publisher or an employee of a newspaper, magazine, or other periodical that is published on a regular basis for any material published in that newspaper, magazine, or other periodical. For purposes of this subdivision, a "newspaper, magazine, or other periodical that is published on a regular basis" shall not include any newspaper, magazine, or other periodical that has as its primary purpose the publication of campaign advertising or communication, as defined by Section 304.

CHAPTER 719

An act to add Section 21554 to the Government Code, relating to the Public Employees' Retirement System.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 21554 is added to the Government Code, to read:

21554. (a) The monthly allowance pursuant to Section 21541 and Article 3 (commencing with Section 21570), paid to the surviving spouse of any deceased patrol, state safety, or state peace officer/firefighter member, who died in the line of duty shall be

restored if that allowance has been discontinued upon the spouse's remarriage. The allowance shall be resumed on the effective date of this section, or the first of the month, following receipt by the board of a written application from the spouse for resumption of the allowance, whichever is later.

(b) The amount of the benefits due shall be calculated as though the allowance had never been discontinued because of remarriage, and shall not be payable for the period between the date of discontinuance and the effective date of resumption.

(c) The board has no duty to identify, locate, or notify a spouse who previously had his or her allowance discontinued because of a remarriage.

(d) Any surviving spouse shall be entitled to restoration of terminated benefits upon application to the system if he or she previously qualified for special death benefits because his or her spouse died in the line of duty.

CHAPTER 720

An act to amend Sections 113715, 113870, 113895, 114020, 114065, and 114350 of, to add Sections 113716 and 113823 to, to add Chapter 13.5 (commencing with Section 114332) to, and to repeal and add Article 13 (commencing with Section 114310) of, Part 7 of Division 104 of, the Health and Safety Code, relating to environmental health, and making an appropriation therefor.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 113715 of the Health and Safety Code is amended to read:

113715. Nothing in this chapter shall prohibit a local governing body from adopting an evaluation or grading system for food facilities, from prohibiting any type of food facility, from adopting an employee health certification program, or from regulating the provision of patron toilet and hand washing facilities.

SEC. 2. Section 113716 is added to the Health and Safety Code, to read:

113716. (a) (1) On or before January 1, 2000, each food facility shall have an owner or employee who has successfully passed an approved and accredited food safety certification examination. For purposes of this section, multiple contiguous food facilities permitted within the same site and under the same management, ownership, or control shall be deemed to be one food facility, notwithstanding the fact that the food facilities may operate under separate permits.

(2) The Legislature finds and declares that the certification required by this section may impose hardship on the owners and operators of smaller food facilities and, therefore, to the extent that a person who is seeking certification pursuant to this section requires training in order to successfully pass an approved and accredited food safety certification examination, this training shall be designed and provided in as flexible a manner as possible. To that end, the Legislature further finds and declares that this training may include, but need not be limited to, classroom training, home study programs, and computer-assisted training.

(b) On and after January 1, 2000, a food facility that commences operation, changes ownership, or no longer has a certified owner or employee pursuant to this section shall have 60 days to comply with subdivision (a).

(c) There shall be at least one certified owner or employee at each food facility. No certified person at a food facility for purposes of subdivision (a) may serve at any other food facility as the person required to be certified pursuant to this section. The certified owner or employee need not be present at the food facility during all hours of operation.

(d) The responsibilities of a certified owner or employee at a food facility shall include the safety of food preparation and service, including ensuring that all employees who handle, or have responsibility for handling, unpackaged foods of any kind, have sufficient knowledge to ensure the safe preparation or service of the food, or both. The nature and extent of the knowledge that each employee is required to have may be tailored, as appropriate, to the employee's duties related to food safety issues.

(e) The food safety certificate issued pursuant to this section shall be retained on file at the food facility at all times, and shall be made available for inspection by the health enforcement officer.

(f) The issuance date for each original certificate issued pursuant to this section shall be the date when the individual successfully completes the examination. A certificate shall expire three years from the date of original issuance. Any replacement or duplicate certificate shall have as its expiration date the same expiration date that was on the original certificate.

(g) Certified individuals shall be recertified every three years by passing an approved and accredited food safety certification examination.

(h) On or before March 1, 1999, enforcement agencies shall notify all permitted food facilities subject to this section of the new legal obligation imposed by this section and provide to them the names and contact addresses for all approved and accredited food safety certification examinations.

(i) The food safety certification examination shall include, but need not be limited to, the following elements of knowledge:

(1) Foodborne illness, including terms associated with foodborne illness, microorganisms, hepatitis A, and toxins that can contaminate food and the illness that can be associated with contamination, definition and recognition of potentially hazardous foods, chemical, biological, and physical contamination of food, and the illnesses that can be associated with food contamination, and major contributing factors for foodborne illness.

(2) The relationship between time and temperature with respect to foodborne illness, including the relationship between time and temperature and microorganisms during the various food handling, preparation, and serving states, and the type, calibration, and use of thermometers in monitoring food temperatures.

(3) The relationship between personal hygiene and food safety, including the association of hand contact, personal habits and behaviors, and food worker health to foodborne illness, and the recognition of how policies, procedures, and management contribute to improved food safety practices.

(4) Methods of preventing food contamination in all stages of food handling, including terms associated with contamination and potential hazards prior to, during, and after delivery.

(5) Procedures for cleaning and sanitizing equipment and utensils.

(6) Problems and potential solutions associated with facility and equipment design, layout, and construction.

(7) Problems and potential solutions associated with temperature control, preventing cross-contamination, housekeeping, and maintenance.

(j) (1) Except as otherwise provided in paragraph (2), the following food safety certification examinations shall be deemed to be approved and accredited for purposes of this section:

(A) The ServSafe Serving Safe Food Certification Examination.

(B) The Chauncey Group International Food Protection Certification Examination.

(C) The National Assessment Institute's Certified Professional Food Manager Examination.

(D) Professional Testing, Inc.

(E) Dietary Managers' Association.

(2) (A) On or before January 1, 2000, the department, in consultation with the California Conference of Directors of Environmental Health (CCDEH), the Conference for Food Protection, representatives of the retail food industry, and other interested parties, shall develop regulations to approve and accredit additional equivalent food safety certification examinations and to disapprove and eliminate accreditation of food safety certification examinations.

(B) Commencing January 1, 1999, at least one of the accredited statewide food safety certification examinations shall cost no more than sixty dollars ($60), including the certificate. However,

commencing January 1, 2000, the department may adjust the cost of food safety certification examinations to reflect actual expenses incurred in producing and administering the food safety certification examinations required under this section. If a food safety certification examination is not available at the price established by the department, the certification and recertification requirements relative to food safety certification examinations imposed by this section shall not apply.

(k) (1) For purposes of this section, a food facility includes only the following:

(A) A food establishment, as defined in Section 113780, at which unpackaged foods are prepared, handled, or served.

(B) A mobile food preparation unit, as defined in Section 113815.

(C) A stationary mobile food preparation unit, as defined in Section 113890.

(D) A commissary, as defined in Section 113750.

(2) Notwithstanding paragraph (1), this section shall not apply to the premises of a licensed winegrower or brandy manufacturer utilized for winetastings conducted pursuant to Section 23356.1 of the Business and Professions Code of wine or brandy produced or bottled by, or produced and packaged for, that licensee.

(3) Notwithstanding paragraph (1), this section shall not apply to a food facility operated by a school district, county office of education, or community college district if the district or office elects to be regulated by the food safety program of the city, county, or city and county in which the school district, county office of education, or community college district is located.

(*l*) For purposes of this section, the following definitions apply:

(1) "Food safety program" means any city, county, or city and county program that requires, at a minimum, either of the following:

(A) The training of one or more individuals, whether denominated as "owners," "managers," "handlers," or otherwise, relating in any manner to food safety issues.

(B) Individuals to pass a food safety certification examination.

(2) "Food handler program" means any city, county, or city and county program that requires that all or a substantial portion of the employees of a food facility who are involved in the preparation, storage, service, or handling of food products, engage in food safety training or pass a food safety certification examination, or both.

(m) (1) Any provisions of a food safety program in effect prior to January 1, 1999, that require training or a certification examination, or both, shall be deemed to satisfy the requirements of this chapter until January 1, 2001, at which time these provisions shall fully conform with the requirements of this chapter. However, all provisions of a food safety program in effect prior to January 1, 1999, that do not pertain to training or a certification program shall conform with the requirements of this chapter by January 1, 2000.

(2) On and after January 1, 1999, a food safety program that was not in effect prior to that date may not be enacted, adopted, implemented, or enforced, unless the program fully conforms with the requirements of this chapter.

(n) No city, county, or city and county may enact, adopt, implement, or enforce any requirement that any food facility or any person certified pursuant to this section do any of the following:

(1) Obtain any food safety certificate or other document in addition to the certificate required by this section.

(2) Post, place, maintain, or keep the certificate required by this section other than as specified in subdivision (e).

(3) Pay any fee or other sum as a condition for having a certificate verified, validated, or otherwise processed by the city, county, or city and county.

(o) Certification conferred pursuant to this chapter shall be recognized throughout the state. Nothing in this chapter shall be construed to prohibit any local enforcement agency from implementing or enforcing a food handler program, as defined in paragraph (2) of subdivision (*l*) that took effect prior to January 1, 1998, but only in the form in which the program existed prior to January 1, 1998.

(p) Notwithstanding Section 113935, a violation of this section shall not constitute a misdemeanor, but shall constitute grounds for permit suspension or revocation, in accordance with Article 5 (commencing with Section 113950).

SEC. 2.5. Section 113823 is added to the Health and Safety Code, to read:

113823. "Nonprofit charitable temporary food facilities" means a temporary food facility, as defined in Section 113895, that is conducted and operated by a corporation incorporated pursuant to the Nonprofit Corporation Law (Div. 2 (commencing with Section 5000), Title 1, Corp. C.), that is exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code and Section 23701d of the Revenue and Taxation Code.

SEC. 3. Section 113870 of the Health and Safety Code is amended to read:

113870. (a) "Restricted food service transient occupancy establishment" means an establishment of 20 guestrooms or less, that provides overnight transient occupancy accommodations, that serves food only to its registered guests, that serves only a breakfast or similar early morning meal, and no other meals, and with respect to which the price of food is included in the price of the overnight transient occupancy accommodation.

(b) Notwithstanding subdivision (a), a restricted food service transient occupancy establishment may serve light foods or snacks presented to the guest for self-service.

(c) For purposes of this section, "restricted food service transient occupancy establishment" refers to an establishment as to which the

predominant relationship between the occupants thereof and the owner or operator of the establishment is that of innkeeper and guest. For purposes of this section, the existence of some other legal relationships as between some occupants and the owner or operator shall be immaterial.

SEC. 4. Section 113895 of the Health and Safety Code is amended to read:

113895. (a) "Temporary food facility" means a food facility operating out of temporary facilities approved by the enforcement officer at a fixed location for a period of time not to exceed 25 consecutive or nonconsecutive days in any 90-day period in conjunction with a single, weekly, or monthly community event, as defined in subdivision (b).

(b) "Community event" means an event that is of a civic, political, public, or educational nature, including state and county fairs, city festivals, circuses, and other similar events as determined by the local enforcement agency. "Community event" shall not include a swap meet, flea market, swap mall, seasonal sporting event, grand opening celebration, anniversary celebration, or similar functions.

SEC. 5. Section 114020 of the Health and Safety Code is amended to read:

114020. (a) No employee shall commit any act that may result in the contamination or adulteration of food, food contact surfaces, or utensils.

(b) All employees preparing, serving, or handling food or utensils shall wear clean, washable outer garments, or other clean uniforms. All employees shall wear hairnets, caps, or other suitable coverings to confine all hair when required to prevent the contamination of food, equipment, or utensils.

(c) All employees shall thoroughly wash their hands and arms by vigorously rubbing them with cleanser and warm water, paying particular attention to areas between the fingers and around and under the nails, rinsing with clean water. Employees shall wash their hands:

(1) Immediately before engaging in food preparation, including working with unpackaged food, clean equipment and utensils, and unwrapped single-service food containers and utensils.

(2) Before dispensing or serving food or handling clean tableware and serving utensils in the food service area.

(3) As often as necessary, during food preparation, to remove soil and contamination and to prevent cross-contamination when changing tasks.

(4) When switching between working with raw foods and working with ready-to-eat foods.

(5) After touching bare human body parts other than clean hands and clean, exposed portions of arms.

(6) After using the toilet room.

(7) After caring for or handling any animal allowed in a food facility pursuant to Section 114045.

(8) After coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating, or drinking.

(9) After handling soiled equipment or utensils.

(10) After engaging in any other activities that contaminate the hands.

(d) No employee shall expectorate or use tobacco in any form in any area where food is prepared, served, or stored, or where utensils are cleaned or stored.

(e) Food employees shall use utensils, including scoops, forks, tongs, paper wrappers, gloves, or other implements, to assemble ready-to-eat food or to place ready-to-eat food on tableware or in other containers. However, ready-to-eat food may be assembled or placed on tableware or in other containers in an approved food preparation area without using utensils by employees who comply with the hand washing requirements specified in subdivision (c). Food that has been served to the customer and then wrapped or packaged at the direction of the customer shall be handled only with utensils. These utensils shall be properly sanitized before reuse.

(f) Gloves shall be worn when contacting food and food contact surfaces if the employee has any cuts, sores, rashes, artificial nails, nail polish, rings (other than a plain ring, such as a wedding band), uncleanable orthopedic support devices, or finger nails that are not clean, neatly trimmed, and smooth.

(g) Whenever gloves are worn, they shall be changed, replaced, or washed as often as hand washing is required in subdivision (c). When single-use gloves are used, they shall be replaced after removal.

SEC. 6. Section 114065 of the Health and Safety Code is amended to read:

114065. All new and replacement food-related and utensil-related equipment shall be certified or classified for sanitation by an American National Standards Institute (ANSI) accredited certification program. In the absence of an applicable ANSI sanitation certification, food-related and utensil-related equipment shall be approved by the enforcement agency.

SEC. 7. Article 13 (commencing with Section 114310) of Part 7 of Division 104 of the Health and Safety Code is repealed.

SEC. 8. Article 13 (commencing with Section 114310) is added to Part 7 of Division 104 of the Health and Safety Code, to read:

Article 13. Temporary Food Facilities

114310. This article governs sanitation requirements for temporary food facilities as defined in this chapter.

114311. Except as otherwise set forth in this article, temporary food facilities shall meet the applicable requirements in Article 6

(commencing with Section 113975) and Article 7 (commencing with Section 113990).

114312. All food that is sold, given away, or dispensed from a temporary food facility shall be from an approved source. No food prepared or stored in a private home may be used, stored, served, offered for sale, sold, or given away in a temporary food facility.

114313. The name, address, and telephone number of the owner, operator, permittee, or business shall be legible and clearly visible to patrons. The name shall be in letters at least 8 centimeters (3 inches) high and shall have strokes at least one centimeter ($^3/_8$ inches) wide, and shall be of a color contrasting with the temporary food facility. Letters and numbers for the address and telephone numbers may not be less than 2.5 centimeters (1 inch) in height.

114314. In addition to the permit issued to each complying temporary food facility, a permit shall be obtained by the person or organization that is in control of any community event at which one or more temporary food facilities operates. This permit shall specify all the areas and facilities at the event site to be utilized by the temporary food facilities and the responsibilities of the person or organization issued the permit, including ensuring compliance with this article by the temporary food facilities operating at the event. Effective January 1, 2000, the person or organization in control of the event shall submit a permit application and a site plan to the local enforcement agency at least two weeks prior to the event. The site plan shall show the proposed locations of the temporary food facilities, restrooms, and all shared utensil washing, hand washing, and janitorial facilities.

114315. (a) Notwithstanding Section 113995, during operating hours of the temporary food facility, potentially hazardous food may be held at a temperature not to exceed 7 degrees Celsius (45 degrees Fahrenheit) for up to 12 hours in any 24-hour period. At the end of the operating day, potentially hazardous food that has been held in accordance with this subdivision shall be placed in refrigeration units that maintain the food at or below 5 degrees Celsius (41 degrees Fahrenheit) or the food shall be destroyed in a manner approved by the local enforcement agency.

(b) At the end of the operating day potentially hazardous food that is held at or above 60 degrees Celsius (140 degrees Fahrenheit) shall be either destroyed in a manner approved by the local enforcement agency or donated in accordance with Article 19 (commencing with Section 114435), but may not be reserved in a food facility.

(c) Adequate cold food and hot food holding equipment shall be provided to insure proper temperature control during transportation and operation of the temporary food facility.

114316. In addition to complying with Section 114045, live animals, birds, and fowl may not be kept or allowed within 6 meters (20 feet) of any area where food is stored or held for sale. All

reasonable efforts shall be taken to exclude wild animals, birds, and fowl from the temporary food facility. This subdivision shall not apply to guide dogs, signal dogs, or service dogs when used in the manner specified in Section 54.1 of the Civil Code.

114317. Food-related and utensil-related equipment used in conjunction with a temporary food facility shall comply with Section 114065.

114318. Ice used for refrigeration purposes may not be used for consumption in food or beverages.

114319. (a) Adequate and suitable facilities shall be provided for the storage of food, utensils, and related items.

(b) All food-related and utensil-related items shall be stored at least 15 centimeters (6 inches) above the floor and in a manner that will protect these items from sources of contamination.

(c) During periods of inoperation, food shall be stored in one of the following methods:

(1) Within a fully enclosed temporary food facility that is in compliance with Sections 114030 and 114145.

(2) In lockable food storage compartments or containers meeting both of the following conditions:

(A) The food is adequately protected at all times from contamination, exposure to the elements, ingress of rodents and other vermin, and temperature abuse.

(B) The storage compartments or containers have been approved by the local enforcement agency.

(3) Within a permitted food facility or other facility approved by the local enforcement agency.

114320. During transportation to and from the temporary food facility and during operation of the temporary food facility, all food, food contact surfaces, and utensils shall be protected from contamination.

114321. At least one toilet facility for each 15 employees shall be provided within 60 meters (200 feet) of each temporary food facility. Each toilet facility shall be provided with hand washing facilities equipped with hot and cold running water. Hand washing cleanser and single-use sanitary towels shall be provided in permanently installed dispensers at each hand washing facility. Temporary food facilities that handle only prepackaged foods may provide cold water with a germicidal soap in lieu of hot and cold running water at the hand washing facilities.

114322. Adequate janitorial facilities shall be provided for the cleaning of the temporary food facilities, restrooms, and all shared utensil washing and hand washing facilities. Janitorial facilities shall be provided with hot and cold running water from a mixing valve.

114323. An area separate from food preparation, utensil washing, and food storage areas shall be provided for the storage of employee clothing or other personal effects. Personal effects shall be stored in

a manner that prevents the contamination of food-related and utensil-related items.

114324. Adequate lighting shall be provided.

114325. (a) An adequate supply of potable hot water, at least 48 degrees Celsius (120 degrees Fahrenheit) shall be provided for utensil washing, hand washing, and janitorial purposes. The water supply shall be from a source approved by the enforcement agency. The potable water supply shall be protected with a backflow or back siphonage protection device, as required by applicable plumbing codes.

(b) Adequate potable water shall be provided, commensurate with the food handling activities taking place in the temporary food facility. In addition to the water needed for food preparation and dispensing, at least 75.8 liters (20 gallons) of potable water shall be provided per temporary food facility per day of operation of utensil washing and hand washing.

(c) The inlet to a potable water tank shall be provided with a connection of a size and type that will prevent its use for any other service, and shall be constructed so that backflow and other contamination of the water supply is prevented. Hoses used to fill potable water tanks shall be made of food grade materials and handled in a sanitary manner.

114326. Adequate liquid waste holding facilities shall be provided and shall meet all of the following requirements:

(a) All liquid waste shall be disposed of in a manner approved by the enforcement agency.

(b) The liquid waste tanks shall have a minimum capacity that is 50 percent greater than the potable water tanks.

(c) When ice is utilized in the storage or display of foods or beverages, an additional minimum liquid waste holding tank capacity equal to one-third of the volume of the ice bins shall be provided for the drainage of ice melt.

(d) Additional liquid waste tank capacity may be required where liquid waste production or spillage is likely to occur.

(e) Any connection to a liquid waste holding tank shall preclude the possibility of contaminating any food, food contact surface, or utensils.

114327. Open-air barbecue facilities may be operated adjacent only to those temporary food facilities that are permitted to handle the types of foods to be prepared on the barbecue and with the approval of the local enforcement officer and subject to the requirements of Article 9 (commencing with Section 114185). All other cooking equipment shall be installed and operated in compliance with all applicable local building and fire codes.

114328. Based upon local environmental conditions, location, and other similar factors, the enforcement officer may establish additional structural or operational requirements, or both, as necessary to ensure that foods are of a safe and sanitary quality.

114329. In addition to complying with Sections 114310 to 114328, inclusive, temporary food facilities that handle only prepackaged foods shall also meet both of the following requirements:

(a) A durable and readily cleanable floor surface shall be provided within the temporary food facility.

(b) A temporary food facility shall be designed and operated so as to prevent contamination of food under normal operating conditions with regard to employee sanitation, and minimize exposure to airborne contaminants, birds, vermin, leaves, rain, condensation, and other forms of contamination. Overhead protection may be required by the enforcement agency in order to protect food products from contamination.

114330. In addition to complying with Sections 114310 to 114328, inclusive, temporary food facilities that handle nonprepackaged foods shall also meet all of the following requirements:

(a) Temporary food facilities shall be fully enclosed, meeting the requirements of Sections 114030 and 114145, except that temporary food facilities that handle only nonprepackaged nonpotentially hazardous food shall be fully enclosed, or, if approved by the local enforcement agency, all food handling activities shall take place within food compartments meeting the requirements of subdivision (o) of Section 114265.

(b) A durable and readily cleanable floor surface shall be provided within the temporary food facility.

(c) Walls shall be smooth, durable, and readily cleanable. Screening that is at least 16 mesh shall be considered an acceptable wall material for enclosing a temporary food facility.

(d) Ceilings shall be smooth, durable, and readily cleanable. Screening shall only be acceptable as a ceiling material above cooking equipment when necessary for ventilation purposes.

(e) Food condiments shall be protected from contamination and, where available for customer self-service, be prepackaged or available only from approved dispensing devices.

(f) A stainless steel utensil washing sink with at least three compartments with two integrally installed stainless steel drainboards shall be provided. The sink compartments and drainboards shall be large enough to accommodate the largest utensil or piece of equipment to be cleaned in the sink. The sink shall be provided with hot and cold running water from a mixing valve. The sink shall be located within each temporary food facility, except that one sink may be shared by no more than four temporary food facilities that handle only nonprepackaged nonpotentially hazardous food, if the sink is centrally located and is adjacent to the sharing facilities. The local enforcement agency may allow utensil washing facilities other than those required by this section when it deems that utensils can still be handled in a safe and sanitary manner.

(g) Hand washing facilities, separate from the utensil washing sink, shall be provided. The hand washing facilities shall be located

within each temporary food facility, except that the facilities may be shared by no more than four temporary food facilities that handle only nonprepackaged nonpotentially hazardous food, if the facilities are centrally located and are adjacent to the sharing facilities. Each hand washing facility shall be equipped with hot and cold running water. Hand washing cleanser and single-use sanitary towels shall be provided in permanently installed dispensers at each hand washing facility. The local enforcement agency may allow hand washing facilities other than those required by this section when it deems that the alternate facilities are adequate.

SEC. 9. Chapter 13.5 (commencing with Section 114332) is added to Part 7 of Division 104 of the Health and Safety Code, to read:

CHAPTER 13.5 NONPROFIT CHARITABLE TEMPORARY FOOD FACILITIES

114332. This article governs sanitation requirements for nonprofit charitable temporary food facilities.

114332.1. Nonprofit charitable temporary food facilities may operate once annually for a period of time not to exceed 72 hours.

114332.2. (a) Floors shall be smooth and cleanable. The use of sawdust or similar materials is prohibited.

(b) Walls and ceilings shall be constructed of either wood, canvas, plastic, or similar material and fine mesh fly screening and shall completely enclose the facility. Facilities in which all food and beverage is prepackaged at a facility approved by the local enforcement officer shall not be required to be fully enclosed with fly screening. Food service openings shall be equipped with tightfitting closures to minimize the entrance of insects.

(c) Except where all food and beverage is prepackaged, handwashing, and utensil washing facilities approved by the enforcement officer shall be provided within nonprofit charitable temporary food facilities.

(d) Facilities for the sanitary disposal of all liquid waste shall be subject to the approval of the enforcement officer.

(e) At least one toilet facility for each 15 employees shall be provided within 60 meters (200 feet) of each nonprofit charitable temporary food facility.

(f) Food contact surfaces shall be smooth, easily cleanable, and nonabsorbent.

114332.3. (a) All food shall be prepared in a food establishment or on the premises of a nonprofit charitable temporary food facility. No food or beverage stored or prepared in a private home may be offered for sale, sold, or given away from a nonprofit charitable temporary food facility.

(b) All food and beverage shall be protected at all times from unnecessary handling and shall be stored, displayed, and served so as to be protected from contamination.

(c) Potentially hazardous food and beverage shall be maintained at or below 7 degrees Celsius (45 degrees Fahrenheit) or at or above 60 degrees Celsius (140 degrees Fahrenheit) at all times.

(d) Ice used in beverages shall be protected from contamination and shall be maintained separate from ice used for refrigeration purposes.

(e) All food and food containers shall be stored off the floor on shelving or pallets located within the facility.

(f) Smoking is prohibited in nonprofit charitable temporary food facilities.

(g) (1) Except as provided in paragraph (2), live animals, birds, or fowl shall not be kept or allowed in nonprofit charitable temporary food facilities.

(2) Paragraph (1) does not prohibit the presence, in any room where food is served to the public, guests, or patrons, of a guide dog, signal dog, or service dog, as defined by Section 54.1 of the Civil Code, accompanied by a totally or partially blind person, deaf person, person whose hearing is impaired, or handicapped person, or dogs accompanied by persons licensed to train guide dogs for the blind pursuant to Chapter 9.5 (commencing with Section 7200) of Division 3 of the Business and Professions Code.

(3) Paragraph (1) does not apply to dogs under the control of uniformed law enforcement officers or of uniformed employees of private patrol operators and operators of a private patrol service who are licensed pursuant to Chapter 11.5 (commencing with Section 7580) of Division 3 of the Business and Professions Code, while these employees are acting within the course and scope of their employment as private patrol persons.

(4) The persons and operators described in paragraphs (2) and (3) are liable for any damage done to the premises or facilities by the dog.

(5) The dogs described in paragraphs (2) and (3) shall be excluded from food preparation and utensil wash areas. Aquariums and aviaries shall be allowed if enclosed so as not to create a public health problem.

(h) All garbage shall be disposed of in a manner approved by the enforcement officer.

(i) Employees preparing or handling food shall wear clean clothing and shall keep their hands clean at all times.

114332.4. The enforcement officer may establish additional structural or operational requirements as necessary to ensure that food is of a safe and sanitary quality.

114332.5. Open-air barbecue facilities may be operated adjacent to nonprofit charitable temporary food facilities with the approval of the enforcement officer and subject to the requirements of Article 9 (commencing with Section 114185).

114332.6. Each local enforcement agency shall annually report to the State Department of Health Services regarding the adequacy of

the standards applied by this article to any nonprofit charitable temporary food facilities operating within its jurisdiction, and the department shall review these reports and confer with the California Conference of Directors of Environmental Health and with affected industry groups.

SEC. 10. Section 114350 of the Health and Safety Code is amended to read:

114350. Certified farmers' markets shall meet the provisions of Article 6 (commencing with Section 113975) and, in addition, shall meet all of the following requirements:

(a) All food shall be stored at least 15 centimeters (6 inches) off the floor or ground or under any other conditions that are approved.

(b) Food preparation is prohibited at certified farmers' markets with the exception of the food samples. Distribution of food samples is allowed provided that the following sanitary conditions exist:

(1) Samples shall be kept in approved, clean, covered containers.

(2) All food samples shall be distributed by the producer in a sanitary manner.

(3) Clean, disposable plastic gloves shall be used when cutting food samples.

(4) Food intended for sampling shall be washed, or cleaned in another manner, of any soil or other material by potable water in order that it is wholesome and safe for consumption.

(5) Potable water shall be available for hand washing and sanitizing as approved by the local enforcement agency.

(6) Potentially hazardous food samples shall be maintained at or below 45 degrees Fahrenheit. All other food samples shall be disposed of within two hours after cutting.

(7) Utensil and hand washing water shall be disposed of in a facility connected to the public sewer system or in a manner approved by the local enforcement agency.

(8) Utensils and cutting surfaces shall be smooth, nonabsorbent, and easily cleaned or disposed of as approved by the local environmental health agency.

(c) Approved toilet and hand washing facilities shall be available within 60 meters (200 feet) of the premises of the certified farmers' market or as approved by the enforcement officer.

(d) No live animals, birds, or fowl shall be kept or allowed within 6 meters (20 feet) of any area where food is stored or held for sale. This subdivision does not apply to guide dogs, signal dogs, or service dogs when used in the manner specified in Section 54.1 of the Civil Code.

(e) All garbage and rubbish shall be stored, and disposed of, in a manner approved by the enforcement officer.

(f) Notwithstanding Article 11 (commencing with Section 114250), vendors selling food adjacent to, and under the jurisdiction and management of, a certified farmers' market may store, display,

and sell from a table or display fixture apart from the vehicle, in a manner approved by the local enforcement agency.

(g) Notwithstanding Section 113895, temporary food facilities may be operated as a separate event adjacent to, and in conjunction with, certified farmers' markets that are operated as a community event by a nonprofit organization or a local government agency. The organization in control of the event at which one or more temporary food facilities operate shall comply with Section 114314.

SEC. 11. The sum of one hundred thousand dollars ($100,000) is hereby appropriated from the General Fund to the State Department of Health Services for purposes of implementing paragraph (2) of subdivision (j) of Section 113716 of the Health and Safety Code, and for carrying out any other duties associated with the implementation of a statewide food safety program.

SEC. 12. 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 721

An act to add and repeal Division 16 (commencing with Section 15000) of the Family Code, relating to family law information centers.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Division 16 (commencing with Section 15000) is added to the Family Code, to read:

DIVISION 16. FAMILY LAW INFORMATION CENTERS

15000. (a) The Legislature finds and declares the following:

(1) A growing number of family law litigants are unrepresented in family law proceedings, and the primary reason for the lack of representation in these matters is their inability to afford legal assistance.

(2) The failure to have access to legal resources prevents low-income litigants from fully understanding their rights and remedies in family law proceedings, thereby restricting their access to justice.

(3) There is a compelling state interest in ensuring that all family law litigants better understand court procedures and requirements and all litigants have more meaningful access to family court.

(4) It is the public policy of this state to maximize the opportunity for low-income persons to receive fair and just treatment by the family court and to decrease inequities resulting from an unrepresented party's limited legal skills and knowledge.

(b) It is the intent of the Legislature to create information centers to help all low-income family law litigants better understand their obligations, rights, and remedies and to provide procedural information to enable them to better understand and maneuver through the family court system.

15010. (a) (1) It is the intent of the Legislature in enacting this section to establish a pilot project to be administered by the Judicial Council for the purpose of providing information to unrepresented low-income family law litigants.

(2) It is the intent of the Legislature, in creating this pilot project, to determine the most effective service delivery model to provide family law information and services to unrepresented litigants.

(3) It is the intent of the Legislature that all family law services available to litigants in the superior court of each county strive to adopt policies to most effectively coordinate their activities to ensure ease of access to unrepresented litigants and to avoid unnecessary duplication of services and administrative oversight by the Judicial Council or other oversight agencies.

(b) (1) The pilot project shall consist of three pilot project courts that shall be selected by the Judicial Council from those courts that apply to participate in the pilot project. No court shall be required to apply for the project.

(2) The pilot project courts shall establish a family law information center located in the superior court, that shall be supervised by an active member of the State Bar in good standing.

(3) In superior courts with a family law facilitator, the pilot project shall coordinate its services with the services of the family law facilitator, and in at least one pilot project court, the family law facilitator shall staff and provide the services of the family law information center.

(4) In selecting the three pilot project courts, the Judicial Council shall give priority to courts in counties that the Judicial Council determines are most underserved.

(5) The pilot project courts shall determine the composition and number of additional staff necessary to provide the services mandated by this section.

(c) The family law information center shall provide, to unrepresented low-income litigants, information and services, including, but not limited to, the following:

(1) Information as to the nature of various types of relief available through the family court, including restraining orders, marital dissolution or legal separation, paternity, child or spousal support, disposition of property, and child custody and visitation, and the method to seek that relief.

(2) Information as to the pleadings necessary to be filed for relief and instructions on the proper completion of those pleadings, including information as to the importance of the information called for by the pleadings.

(3) Information concerning the requirements for proper service of court papers.

(4) Assistance in preparing orders after court proceedings consistent with the court's announced orders.

(5) Information concerning methods of enforcing court orders in family law proceedings.

(6) The family law information center shall maintain a directory of community resources, including, but not limited to, low-cost legal assistance, counseling, domestic violence shelters, parenting education, mental health services, and job placement programs.

(7) The family law information center shall encourage parties to seek legal advice and assistance from an independent attorney.

(d) For purposes of this division, "low-income" shall mean individuals whose net monthly income, after deduction of mandatory court ordered payments, is 200 percent or less of the current monthly poverty line annually established by the Secretary of Health and Human Services pursuant to the Omnibus Budget Reconciliation Act of 1981, as amended. Family law litigants, prior to receiving the services of the family law information center, shall be required to sign a declaration attesting to their financial eligibility to receive those services. No other efforts to verify financial eligibility shall be necessary.

(e) The family law information center shall provide interpreter services, to the extent available in the pilot project courts, and allow

the use of translators to facilitate the services provided pursuant to subdivision (c).

(f) The Judicial Council shall promulgate guidelines for the operation of the family law information center in accordance with the Rules of Professional Conduct.

(g) The family law information center shall not represent any party. No attorney-client relationship is created between a party and the family law information center as a result of any information or services provided to the party by the family law information center pursuant to subdivision (c). The family law information center shall give conspicuous notice that no attorney-client relationship exists between the center, its staff, and the family law litigant.

(h) The family law information center, and all persons employed by or working with the family law information center, shall maintain the confidentiality of all information provided by or to any party in the course of carrying out the services described in subdivision (c). All persons employed by or working with the family law information center shall be required to sign a confidentiality agreement, to be drafted by the Judicial Council, to ensure the confidentiality of all communications. However, nothing in this section shall preclude the family law information center from providing information to multiple parties to the same case if the parties otherwise qualify for the services of the family law information center.

(i) The Judicial Council shall create any necessary forms to advise the parties of the types of services provided, that there is no attorney-client relationship, that the family law information center is not responsible for the outcome of any case, that the family law information center does not represent any party and will not appear in court on the party's behalf, and that the other party may also be receiving information and services from the family law information center.

(j) A pilot project court may contract with a private nonprofit entity to staff and provide the services of the family law information center, however, the family law information center must be located, and the services provided, in the superior court.

(k) The Judicial Council shall conduct an evaluation of the pilot project and shall report to the Legislature, no later than March 1, 2002, on the success of the pilot project. The evaluation shall include outcome measures that address increased access to the courts for low-income litigants and any reduced burden on the courts by having the services of the family law information center available. The evaluation shall include an assessment of the number of people using the services of the family law information center, categorized by gender and by type of information sought, including information regarding marital dissolution, paternity, or domestic violence prevention proceedings, or relating to child custody, visitation, child support, or spousal support. The evaluation shall also assess the frequency with which people seek information from the family law

information center to initiate an action or to respond to an action. The pilot project shall be deemed a success if, among other things, the pilot project court assists at least 100 low-income family law litigants in each year of its operation, a majority of the judges surveyed in the pilot project court believe the family law information center helps to expedite family law cases with pro per litigants, and a majority of the persons using the family law information center evaluate the services of the family law information center favorably.

15012. This division shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute deletes or extends that date.

CHAPTER 722

An act to add Sections 8279.2 and 8285.1 to the Education Code, relating to child care.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. (a) The Superintendent of Public Instruction shall take steps necessary to increase the capacity of the child care system, including, but not limited to the following:

(1) Encouraging contracting agencies to develop and maintain child care spaces during nontraditional times, including at night and on weekends.

(2) Encouraging contracting agencies to expand the capacity for infant care.

(3) Encouraging contracting agencies to expand capacity, particularly in geographic areas with high need and limited resources.

(b) The State Department of Education shall coordinate with the State Department of Social Services to prepare and present an interim report by March 31, 1999, and a final report by December 31, 1999, to the Joint Legislative Budget Committee and Department of Finance that defines the strategies, results, and effectiveness of recent expenditures and allocations for building capacity for the state's child care needs, including, but not limited to, the amounts and kinds of capacity increased by those efforts, barriers found in preventing increased capacity, and recommendations for overcoming those barriers. The report shall include recommended best practices for future capacity building activities specific to the types of care in shortest supply, such as infant and toddler care, schoolage care, care in underserved areas, and nontraditional hours care. This report shall also include the results of current pilot studies

involving training CalWORKs recipients as licensed family child care providers or licensed-exempt providers, and recommendations on the magnitude and role of both CalWORKs recipient training and license-exempt care in meeting future needs.

(c) It is the intent of the Legislature that any research activities undertaken by the State Department of Education pursuant to this section be funded by any federal funds appropriated to the State Department of Education for child care capacity-building efforts pursuant to Item 6110-196-0001 of the Budget Act of 1998.

SEC. 2. Section 8279.2 is added to the Education Code, to read:

8279.2. The Superintendent of Public Instruction shall publish the methodology and data used, including county-specific data if such data is used, for the allocation of all child care funds. The superintendent shall make available to the public, within 90 days of an allocation, the accounting information for the allocation. It is the intent of the Legislature to expedite the allocation of funds to the field as quickly as possible. Nothing in this section shall create a requirement for a public hearing on the allocation methodology prior to the issuance of a request for proposal.

SEC. 3. Section 8285.1 is added to the Education Code, to read:

8285.1. The Superintendent of Public Instruction may provide outreach services and technical assistance to new child care contracting agencies and to those providing child care during nontraditional times, in underserved geographic areas, and for children with special child care needs, including infants and toddlers under three years of age.

CHAPTER 723

An act to amend Section 11380.5 of the Health and Safety Code, relating to controlled substances, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 11380.5 of the Health and Safety Code is amended to read:

11380.5. (a) (1) Notwithstanding any other provision of law, any person who is convicted of the possession for sale or the sale of heroin, cocaine, cocaine base, methamphetamine, or phencyclidine (PCP), in addition to the punishment imposed for that conviction, shall be imprisoned in the state prison for an additional one year if the violation occurred upon the grounds of a public park , public library, or ocean-front beach.

(2) For the purposes of this section, a "public park or ocean-front beach" includes adjacent public parking lots and sidewalks.

(3) For the purposes of this section, "public library" means a library, or two or more libraries, operated by a single entity by one or more jurisdictions that serves the general public without distinction.

(b) The additional punishment provided in 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.

(c) The additional punishment provided in this section shall not be imposed in the event that any other additional punishment is imposed pursuant to Section 11353.1, 11353.5, 11353.6, 11353.7, or 11380.1.

(d) Notwithstanding any other provision of law, the court may strike the additional punishment provided for in this section if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(e) This section shall apply to a public park , public library, or ocean-front beach only if the following conditions are satisfied:

(1) The city council , county board of supervisors, or special district board having jurisdiction over the public park , public library, or ocean-front beach adopts an ordinance designating the public park, public library, or ocean-front beach as a "drug-free zone" pursuant to this section.

(2) Notice of this law is posted at the public park , public library, or ocean-front beach.

(f) For purposes of this section, a "public park" includes a public swimming pool and a public youth center.

(g) 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. 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 add public libraries to, and expressly include public swimming pools and public youth centers in, the definition of "public park" for purposes of establishing "drug-free" zones under existing provisions at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 724

An act to add Sections 25350.75, 25350.85, 25350.95, 25350.105, and 25350.115 to, and to add and repeal Section 29530.6 of, the Government Code, to add and repeal Section 33670.95 of the Health and Safety Code, to add Section 96.165 to the Revenue and Taxation Code, and to add and repeal Section 2128.1 of the Streets and Highways Code, relating to local government finance, and making an appropriation therefor.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 25350.75 is added to the Government Code, to read:

25350.75. (a) Prior to entering into an agreement to finance the lease or lease-purchase of property through the execution and delivery or issuance, as the case may be, of certificates of participation or lease revenue bonds, or at any time with respect to a financing agreement with respect to which an election has been made under Section 25350.7, the board of supervisors of a county of the second class may elect, by resolution, to guarantee payment under that financing agreement in accordance with the following:

(1) If the county elects to participate under this section, it shall provide notice to the Controller of that election, and the notice shall include a schedule for the payments to be made by the county under that financing agreement and identify a trustee appointed by the county for the purpose of this section.

(2) In the event that, for any reason, the funds available to the county will not be sufficient to make any payment under the financing agreement at the time that payment is required, the county shall so notify the trustee and deliver to the Controller a duly certified copy of the resolution of its board of supervisors adopted pursuant to Section 29530.6. The trustee shall immediately communicate that information to the affected holders of certificates of participation or bondholders and the Controller.

(3) When the Controller receives notice from the trustee, and a copy of the resolution from the county, as described in paragraph (2), or, after having adopted the resolution specified in paragraph (2), the county fails to make any payment under the financing agreement at the time that payment is required, the Controller shall make an apportionment to the trustee in the amount of that required payment for the purposes of making that payment. The Controller shall make that payment only from moneys to be transmitted to the county by the State Board of Equalization under Section 7204 of the Revenue and Taxation Code, that are derived from that portion of the sales and

use taxes imposed by the county in excess of 1 percent pursuant to Part 1.5 (commencing with Section 7200) of Division 3 of the Revenue and Taxation Code, and that are permitted to be deposited in the general fund of the county pursuant to Section 29530.6. The Controller shall thereupon reduce, by the amount of the payment, the subsequent amounts to which the county would be entitled under that section.

(b) As an alternative to the procedure set forth in paragraphs (2) and (3) of subdivision (a), the board of supervisors of a county of the second class may, on or after the date of adoption by the board of the resolution specified in Section 29530.6, provide a transfer schedule in a notice to the Controller and the State Board of Equalization of its election to participate under this section. The transfer schedule shall set forth the amounts to be transferred to the trustee and the date or dates for the transfers, and the Controller shall, subject to the limitation in the second and third sentences of paragraph (3) of subdivision (a), make apportionments to the trustee in those amounts on the specified date or dates for the purpose of making those transfers.

(c) If a county of the second class is no longer obligated for any period to make all or a portion of the payments with respect to the lease or lease-purchase financed through the execution and delivery or issuance, as the case may be, of certificates of participation or lease revenue bonds, the trustee shall so notify the affected holders of certificates of participation or bondholders, the Controller, and the State Board of Equalization. Upon receipt of the notification, the Controller shall cease making the transfers. If, after the giving of the notice, the obligation of the county to make payments with respect to the lease or lease-purchase financed through the execution and delivery or issuance of certificates of participation or lease revenue bonds is restored, the trustee shall so notify the affected holders of certificates of participation or bondholders, the Controller, and the State Board of Equalization. Upon receipt of the notification, the Controller shall resume making the transfers.

(d) Any election made by a county of the second class pursuant to this section shall be in addition to any other election made by the county pursuant to any other applicable provision of law to guarantee the obligation of the county to make payments with respect to the lease or lease-purchase of property financed through certificates of participation or lease revenue bonds.

SEC. 2. Section 25350.85 is added to the Government Code, to read:

25350.85. (a) Taxes collected by the State Board of Equalization pursuant to Section 7204 of the Revenue and Taxation Code, that are derived from that portion of the taxes imposed by a county of the second class in excess of 1 percent, pursuant to Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code, and that are permitted to be deposited in the general fund of a county

pursuant to paragraph (1) of subdivision (a) of Section 29530.6 shall be pledged, without the necessity for specific authorization of the pledge by the board of supervisors, to all certificates of participation or lease revenue bonds executed and delivered or issued, as the case may be, during the year 1996, including obligations executed and delivered or issued before 2010 to refund those certificates of participation or lease revenue bonds, to finance or refinance the lease or lease-purchase of property of the county and having a stated maturity of 20 years or more. Any refunding obligations shall not have a final maturity later than the final maturity of the refunded obligations. The amount so pledged with respect to any fiscal year of the county shall not exceed the amount to be paid in that fiscal year on those certificates or lease revenue bonds.

(b) The pledge of taxes pursuant to this section shall constitute a contract between a county of the second class and the owners of any of the certificates of participation or lease revenue bonds and shall be protected from impairment by the United States and California Constitutions. The state hereby covenants with the owners of any certificates of participation or lease revenue bonds entitled to the pledge granted by this section that, so long as any of the certificates of participation or lease revenue bonds entitled to the pledge granted by this section shall remain outstanding, (1) the provisions of Section 7202 which authorize the imposition of the taxes shall not be repealed and (2) the provisions of paragraph (1) of subdivision (a) of Section 29530.6 shall not be repealed prior to July 1, 2011, nor shall either section be altered or amended prior to that date in any manner that would adversely affect the security of, or the ability of the county to pay, the principal of and interest on the certificates of participation or lease revenue bonds entitled to the pledge granted by this section. However, nothing precludes any alteration or amendment if and when adequate provision has been made by law for the protection from impairment of the contract represented by the certificates of participation or lease revenue bonds, and the right to so alter or amend is hereby reserved. The county may include this covenant of the state in the agreements or other documents underlying the certificates of participation or lease revenue bonds.

SEC. 3. Section 25350.95 is added to the Government Code, to read:

25350.95. (a) Prior to entering into an agreement to finance the lease or lease-purchase of property through the execution and delivery or issuance, as the case may be, of certificates of participation or lease revenue bonds, or at any time with respect to a financing agreement with respect to which an election has been made under Section 25350.9, the board of supervisors of a county of the second class may elect, by resolution, to guarantee payment under that financing agreement in accordance with the following:

(1) If a county elects to participate under this section, it shall provide notice to the Controller of that election, and the notice shall

include a schedule for the payments to be made by the county under that financing agreement and identify a trustee appointed by the county for the purpose of this section.

(2) In the event that, for any reason, the funds available to the county will not be sufficient to make any payment under the financing agreement at the time that payment is required, the county shall so notify the trustee. The trustee shall immediately communicate that information to the affected holders of certificates of participation or bondholders and to the Controller.

(3) When the Controller receives notice from the trustee as specified in paragraph (2) or the county fails to make any payment under the financing agreement at the time that payment is required, the Controller shall make an apportionment to the trustee in the amount of that required payment for the purpose of making that payment. The Controller shall make that payment only from moneys to be transmitted to the county by the State Board of Equalization under Section 7204 of the Revenue and Taxation Code, that are derived from that portion of the sales and use taxes imposed by the county pursuant to Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code, other than the portion of the taxes described in Section 29530.6, and shall thereupon reduce, by the amount of the payment, the subsequent amounts to which the county would be entitled under that section.

(b) As an alternative to the procedure set forth in paragraphs (2) and (3) of subdivision (a), the board of supervisors of a county may provide a transfer schedule in a notice to the Controller and the State Board of Equalization of its election to participate under this section. The transfer schedule shall set forth amounts to be transferred to the trustee and the date or dates for the transfers and the Controller shall, subject to the limitation in the second sentence of paragraph (3) of subdivision (a), make apportionments to the trustee in those amounts on the specified date or dates for the purpose of making those transfers.

(c) If the county is no longer obligated for any period to make all or a portion of the payments with respect to the lease or lease-purchase financed through the execution and delivery or issuance, as the case may be, of certificates of participation or lease revenue bonds, the trustee shall so notify the affected holders of certificates of participation or bondholders, the Controller, and the State Board of Equalization. Upon receipt of the notification, the Controller shall cease making the transfers. If after the giving of the notice, the obligation of the county to make payments with respect to the lease or lease-purchase financed through the execution and delivery or issuance of certificates of participation or lease revenue bonds is restored, the trustee shall so notify the affected holders of certificates of participation or bondholders, the Controller, and the State Board of Equalization. Upon receipt of the notification, the Controller shall resume making the transfers.

(d) Any election made by a county of the second class pursuant to this section shall be in addition to any other election made by the county pursuant to any other applicable provision of law to guarantee the obligation of the county to make payments with respect to the lease or lease-purchase of property financed through certificates of participation or lease revenue bonds.

SEC. 4. Section 25350.105 is added to the Government Code, to read:

25350.105. (a) Taxes collected by the State Board of Equalization pursuant to Section 7204 of the Revenue and Taxation Code, that are derived from the taxes imposed by a county of the second class pursuant to Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code, other than that portion of those taxes specified in Section 29530.6, shall be pledged, without the necessity for specific authorization of the pledge by the board of supervisors, to all certificates of participation or lease revenue bonds executed and delivered or issued, as the case may be, during the year 1996, including obligations executed and delivered or issued before 2010 to refund those certificates of participation or lease revenue bonds, to finance the lease or lease-purchase of property of the county and having a stated maturity of 20 years or more. Any refunding obligation shall not have a final maturity later than the final maturity of the refunded obligations. The amount so pledged with respect to any fiscal year of the county shall not exceed the amounts to be paid in the fiscal year on those certificates or lease revenue bonds.

(b) The pledge of taxes pursuant to this section shall constitute a contract between the county and the owners of any of the certificates of participation or lease revenue bonds and shall be protected from impairment by the United States and California Constitutions. The state hereby covenants with the owners of any certificates of participation or lease revenue bonds entitled to the pledge granted by this section that, as long as any of the certificates of participation or lease revenue bonds entitled to the pledge granted by this section shall remain outstanding, the provisions of Section 7202 of the Revenue and Taxation Code that authorize the imposition of the taxes shall not be repealed. However, nothing precludes any alteration or amendment if and when adequate provision has been made by law for the protection from impairment of the contract represented by the certificates of participation or lease revenue bonds, and the right to so alter or amend is hereby reserved. The county may include this covenant of the state in the agreements or other documents underlying the certificates of participation or lease revenue bonds.

SEC. 5. Section 25350.115 is added to the Government Code, to read:

25350.115. Notwithstanding any other provisions of this chapter, the sum of the amounts pledged with respect to any fiscal year

pursuant to Sections 25350.6, 25350.85, and 25350.105 shall not exceed the amounts to be paid in that fiscal year on the certificates of participation or lease revenue bonds entitled to the pledge described in those sections.

SEC. 6. Section 29530.6 is added to the Government Code, to read:

29530.6. (a) Notwithstanding any other provision of law, the board of supervisors for any county of the second class may, upon the adoption of a resolution approved by a majority of all of its members, unilaterally modify its contract with the State Board of Equalization, as described in Section 29530, to require that, except to the extent that subdivision (c) applies during any period, county sales and use tax revenues described in Section 29530 be deposited into the county general fund in the amounts specified in subdivision (b).

(b) The amounts specified in this subdivision are:

(1) Amounts equal to amounts required to be repaid pursuant to, or as a consequence of, the final determination described in paragraph (1) of subdivision (d).

(2) Amounts equal, on a monthly basis, to three million one hundred sixty-six thousand six hundred sixty-seven dollars ($3,166,667).

(c) (1) If a county has elected to guarantee payments of its obligations under an agreement to finance the lease or lease-purchase of property through the execution and delivery or issuance, as the case may be, of certificates of participation or lease revenue bonds pursuant to subdivision (a) of Section 25350.75, the amounts required to be deposited in the general fund of the county, in any month, pursuant to subdivision (a) shall be reduced by the amounts, if any, transferred by the Controller to the trustee for the certificates of participation or lease revenue bonds, pursuant to subdivision (a) of Section 25350.75.

(2) If a county has elected to guarantee its obligations under an agreement to finance the lease or lease-purchase of property through the execution and deliverance or issuance, as the case may be, of certificates of participation or lease revenue bonds pursuant to subdivision (b) of Section 25350.75, the amounts required to be deposited in the general fund of the county, in any month, pursuant to subdivision (a) shall be reduced by the amounts transferred by the Controller to the trustee for the certificates of participation or lease revenue bonds, pursuant to subdivision (b) of Section 25350.75.

(d) This section shall become operative:

(1) With respect to the amounts specified in paragraph (1) of subdivision (b) on the date that a court of appellate jurisdiction renders a final determination invalidating Chapter 746 of the Statutes of 1995 to the extent that the final determination requires repayment of the funds transferred under that chapter.

(2) With respect to the amounts specified in paragraph (2) of subdivision (b) beginning with the first month for which a deposit required to be made by subdivision (a) of Section 29530.5 is not made.

(e) In enacting this section, the Legislature intends that the provisions of this act shall not be utilized to justify reductions in existing bus and paratransit services.

(f) The modification authorized by this section is not applicable to the City of Laguna Beach.

(g) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 7. Section 33670.95 is added to the Health and Safety Code, to read:

33670.95. (a) The board of supervisors of a county of the second class may, upon adoption of a resolution or resolutions approved by a majority of all of its members, provide for the repayment by the county's redevelopment agency of its debt to the county for general and specific benefits previously provided by the county to redevelopment project areas within the county. Such resolution or resolutions may provide for the transfer of (1) amounts equal to four million dollars ($4,000,000) a year in two equal installments on June 15 and February 15 of each year and (2) such additional amounts, at such times as are specified in the resolution or resolutions, as may be necessary to assure full repayment of the debt, provided that those additional amounts shall not exceed, in the aggregate, the sum of any amounts required to be repaid by the county to the redevelopment agency pursuant to, or as a consequence of, the final determination described in subdivision (c).

(b) A redevelopment agency of a county of the second class shall not incur any obligation with respect to loans, advances of money, or indebtedness, whether funded, refunded, assumed, or otherwise, that would impair its ability to make the transfers described in subdivision (a) or that would cause those transfers to violate Section 16 of Article XVI of the California Constitution or subdivision (b) of Section 33670. Funds allocated to low- and moderate-income housing pursuant to Section 33334.2 shall not be used for purposes of this section.

(c) This section shall become operative on the earlier of the date that a court of appellate jurisdiction renders a final determination invalidating Chapter 745 of the Statutes of 1995 or the date of a court action suspending or preventing the operation of any provision of Chapter 745. This section shall become inoperative on July 1, 2016, and, as of January 1, 2017, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2017, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 8. Section 96.165 is added to the Revenue and Taxation Code, to read:

96.165. (a) Notwithstanding any other provision of this chapter, for each fiscal year for which this section is operative, the auditor for a county of the second class shall determine those amounts of ad valorem property tax revenue deemed allocated in the prior fiscal year to jurisdictions within that county in those amounts that would be determined if all of the following were true:

(1) Chapter 745 of the Statutes of 1995 had not been enacted.

(2) The amount of ad valorem property tax revenue allocated in the 1995–96 fiscal year to a flood control district or a harbors, beaches, and parks fund was reduced by four million dollars ($4,000,000).

(3) The amount of ad valorem property tax revenue allocated in the 1995–96 fiscal year was increased by the total amount of the reductions specified by paragraph (2).

(b) (1) For the fiscal year after the last fiscal year for which this section is operative, the auditor for a county of the second class shall allocate ad valorem property tax revenues to jurisdictions within the county in those amounts that would be determined if subdivision (a) had never applied to any preceding fiscal year.

(2) Notwithstanding any other provision of this section, no action shall be taken pursuant to this section that adversely affects any flood control project with respect to the Santa Ana River.

(c) This section is operative for each fiscal year beginning after the date on which a court of appellate jurisdiction renders a final determination invalidating Chapter 745 of the Statutes of 1995, and is inoperative for each fiscal year beginning after the date on which the Department of Finance determines that the amounts of property tax revenue transfers to a county of the second class made pursuant to Chapter 745 of the Statutes of 1995, and not repaid, together with the amounts of property tax revenue transfers to a county of the second class made pursuant to this section, equal the amounts of property tax revenue transfers to a county of the second class that would have been made pursuant to Chapter 745 of the Statutes of 1995 had it remained in full force and effect.

SEC. 9. Section 2128.1 is added to the Streets and Highways Code, to read:

2128.1. (a) Notwithstanding any other provision of this chapter, the apportionments that would be made to a county of the second class under this chapter shall be apportioned as follows:

(1) The Orange County Transportation Authority shall be paid one million nine hundred sixteen thousand six hundred sixty-seven dollars ($1,916,667) during each calendar month commencing with the month following the operative month, and ending June 2013.

(2) All remaining apportionments shall be paid to the county of the second class at the time each apportionment would have otherwise been made to the county.

(b) From its general fund, a county of the second class shall make to the Orange County Transportation Authority those payments equal to amounts required to be repaid pursuant to or as a

consequence of a final determination rendered by a court of appellate jurisdiction that Section 2128 is invalid.

(c) This section shall become operative on the date of the final determination that Section 2128 is invalid, and shall become inoperative on June 30, 2013, and as of January 1, 2014, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2014, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 10. 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 due to the uniquely severe fiscal crisis suffered by the County of Orange, and, therefore, this special statute is necessary.

SEC. 11. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 12. Sections 1 through 5 of this act shall become operative on the date that a court of appellate jurisdiction renders a final determination invalidating, in whole or in part, Chapter 746 of the Statutes of 1995.

SEC. 13. 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 725

An act to amend Sections 1810.7 and 1857 of the Insurance Code, relating to insurance.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 1810.7 of the Insurance Code is amended to read:

1810.7. (a) In order to be eligible to take the examination required to be licensed under this chapter, the applicant shall have

completed not less than 12 hours of classroom education in subjects pertinent to the duties and responsibilities of a bail licensee, including, but not limited to, all laws and regulations related thereto, rights of the accused, and ethics. Additionally, a licensee shall complete annually not less than six hours of continuing classroom education in these subjects prior to renewal of his or her license. This continuing education requirement shall not include a written examination.

(b) The commissioner shall biennially approve or disapprove one or more statewide professional organizations or other providers familiar with bail law to provide education for licensure as required by this section. The commissioner may, at any time, disapprove any provider who is not qualified or whose course outlines are not approved, who is not of good business reputation, or who is lacking in integrity, honesty, or competency. The commissioner shall biennially approve or disapprove the course outlines and schedule of classes to be provided.

(c) The statewide professional organization or other providers responsible for providing education for licensure under this chapter shall consult with the California State Sheriffs' Association, the California District Attorneys Association, the California Advisory Board of Surety Agents, and the California Bail Agents Association, prior to submission of the course outlines for approval by the commissioner. The bail license fee shall be increased, the amount of which shall be determined by the commissioner, which shall be deposited in the Insurance Fund for the purposes of recovering the administrative costs for meeting the conditions and purposes of this section. Providers of education or continuing education shall offer courses to all applicants at the same course fees.

(d) Any person who falsely represents to the commissioner that compliance with this section has been met shall be subject, after notice and hearing, to the penalties and fines set out in Section 1814.

(e) A licensee shall not be required to comply with the continuing education requirements of this section if the licensee submits proof satisfactory to the commissioner that he or she has been a licensee in good standing for 30 continuous years in this state and is 70 years of age or older.

(f) The commissioner may make reasonable rules and regulations necessary, advisable, and convenient for the administration and enforcement of this chapter.

SEC. 2. Section 1857 of the Insurance Code is amended to read:

1857. (a) Every insurer or advisory organization and every group, association, or other organization of insurers that engages in joint underwriting or joint reinsurance shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of its experience or the experience of its members and of the data, statistics, or information collected or used by it in connection with the rates, rating plans, rating systems, underwriting

rules, policy or bond forms, surveys, or inspections made or used by it so that those records will be available at all reasonable times to enable the commissioner to determine whether that organization, insurer, group, or association, and, in the case of an insurer, every rate, rating plan, and rating system made or used by it, complies with the provisions of this chapter applicable to it. The maintenance of those records in the office of an organization of which an insurer is a member or subscriber shall be sufficient compliance with this section for any insurer maintaining membership or subscribership in that organization, to the extent that the insurer uses the rating plans, rating systems, or underwriting rules of that organization. The records shall be maintained in an office within this state or shall be made available for examination or inspection within this state by the commissioner at any time upon reasonable notice.

(b) There are established data advisory committees to assist the commissioner in making special calls for one or more lines or types of insurance to which this chapter applies that are commercial insurance as defined in Section 675.5 and to make available the types of reasonable records that subdivision (a) requires insurers, and advisory organizations to maintain and make available. No data advisory committee shall have any authority to veto, amend, or alter any request for the reporting of records or information by the commissioner, but shall only provide advice to the commissioner relative to methods and efficiency in the collection of records and information as set forth in subdivision (c).

(c) Each data advisory committee shall review all proposed industrywide requests for records and information by the commissioner at least one time but shall not review substantially the same request made on a recurring or ad hoc basis in the future. No later than 10 business days after receipt of each proposal, the data advisory committee may advise the commissioner as to both of the following:

(1) Whether the desired records and information are already available in other forms or are being maintained by one or more insurance advisory organizations that may be able to provide the records and information to the commissioner on a more efficient and cost-effective basis.

(2) Whether the format and contents of the proposal are likely to elicit useful information and make recommendations as to changes in the format or contents of the proposal.

If the data advisory committee cannot reach unanimous agreement on its advice to the commissioner, any member may provide his or her own advice. Any written advice to the commissioner by the advisory committee and by individual members shall be submitted simultaneously.

(d) Each data advisory committee shall consist of the following members:

(1) The commissioner or his or her representative.

(2) A representative of the department's statistical unit.

(3) No more than three representatives from advisory organizations operating under this article that maintain insurer records for the lines or types of insurance that are the subject of the call.

(4) Three representatives from various sizes of insurers chosen by the commissioner that underwrite diverse risks for the lines or types of insurance that are subject to the call.

(5) At least one but not more than two qualified consumer representatives chosen by the commissioner. As used in this section, "qualified consumer representative" means a person who has experience with the collection, use, and analysis of insurance data and who can show that he or she represents the interests of consumers as demonstrated by, but not limited to, a history of that type of representation in administrative, legislative, or judicial proceedings.

Any group, association, or insurer that represents persons described in paragraphs (1) to (5), inclusive, may submit to the commissioner the names of those persons for consideration of appointment to the advisory committee.

(e) Each data advisory committee shall meet telephonically. Members of an advisory committee shall receive no compensation.

(f) An insurer may fulfill any obligation to maintain, record, or report information under Article 6.5 (commencing with Section 1857.7) by reporting records required by subdivision (a) to an advisory organization that maintains the insurer's records with those records of other insurers and reports the aggregate records of insurers to the department according to reasonable schedules approved by the commissioner. The aggregate reports shall be made available by the commissioner for public inspection at the department, but shall not disclose the information of an individual insured, insurer, or insurer group.

(g) Upon a request made by any person to the commissioner in conjunction with an insurer's pending rate application, the advisory organization shall, within five business days, send to the commissioner the information in its possession regarding the individual insurer that Article 6.5 (commencing with Section 1857.7) specifically requires to be submitted with those filings. The information sent to the commissioner under this subdivision shall be available for public inspection at the department.

(h) Except as otherwise permitted or required by this section, no advisory organization shall provide an individual insurer's information to any other insurer, person, or organization, other than rates, rating systems, and rating plans that have been filed with the commissioner and are available for public inspection at the department.

(i) The commissioner may adopt rules necessary to implement this section.

(j) Nothing in subdivisions (b) to (i), inclusive, shall be construed to affect any of the following:

(1) Any authority granted to the commissioner under this code to obtain aggregate or individual insurer data or policy records from advisory organizations or insurers.

(2) Any industrywide data reporting requirements and standards that might exist in this chapter.

(3) The right of any person under any provision of this code, including Section 1861.07, to obtain and inspect at the department the aggregate or individual records of insurers maintained by advisory organizations.

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 726

An act to amend Section 1275 of, and to add Section 1275.1 to, the Penal Code, relating to bail.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 1275 of the Penal Code is amended to read:

1275. (a) In setting, reducing, or denying bail, the judge or magistrate shall take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at trial or hearing of the case. The public safety shall be the primary consideration.

In considering the seriousness of the offense charged, the judge or magistrate shall include consideration of the alleged injury to the victim, and alleged threats to the victim or a witness to the crime charged, the alleged use of a firearm or other deadly weapon in the commission of the crime charged, and the alleged use or possession of controlled substances by the defendant.

(b) In considering offenses wherein a violation of Chapter 6 (commencing with Section 11350) of Division 10 of the Health and Safety Code is alleged, the judge or magistrate shall consider the following: (1) the alleged amounts of controlled substances involved in the commission of the offense, and (2) whether the defendant is currently released on bail for an alleged violation of Chapter 6 (commencing with Section 11350) of Division 10 of the Health and Safety Code.

(c) Before a court reduces bail below the amount established by the bail schedule approved for the county, in accordance with subdivisions (b) and (c) of Section 1269b, for a person charged with a serious felony, as defined in subdivision (c) of Section 1192.7, or a violent felony, as defined in subdivision (c) of Section 667.5, the court shall make a finding of unusual circumstances and shall set forth those facts on the record. For purposes of this subdivision, "unusual circumstances" does not include the fact that the defendant has made all prior court appearances or has not committed any new offenses.

SEC. 2. Section 1275.1 is added to the Penal Code, to read:

1275.1. (a) Bail, pursuant to this chapter, shall not be accepted unless a judge or magistrate finds that no portion of the consideration, pledge, security, deposit, or indemnification paid, given, made, or promised for its execution was feloniously obtained.

(b) A hold on the release of a defendant from custody shall only be ordered by a magistrate or judge if any of the following occurs:

(1) A peace officer, as defined in Section 830, files a declaration executed under penalty of perjury setting forth probable cause to believe that the source of any consideration, pledge, security, deposit, or indemnification paid, given, made, or promised for its execution was feloniously obtained.

(2) A prosecutor files a declaration executed under penalty of perjury setting forth probable cause to believe that the source of any consideration, pledge, security, deposit, or indemnification paid, given, made, or promised for its execution was feloniously obtained. A prosecutor shall have absolute civil immunity for executing a declaration pursuant to this paragraph.

(3) The magistrate or judge has probable cause to believe that the source of any consideration, pledge, security, deposit, or indemnification paid, given, made, or promised for its execution was feloniously obtained.

(c) Once a magistrate or judge has determined that probable cause exists, as provided in subdivision (b), a defendant bears the burden by a preponderance of the evidence to show that no part of any consideration, pledge, security, deposit, or indemnification paid, given, made, or promised for its execution was obtained by felonious means. Once a defendant has met such burden, the magistrate or judge shall release the hold previously ordered and the defendant shall be released under the authorized amount of bail.

(d) The defendant and his or her attorney shall be provided with a copy of the declaration of probable cause filed under subdivision (b) no later than the date set forth in Section 825.

(e) Nothing in this section shall prohibit a defendant from obtaining a loan of money so long as the loan will be funded and repaid with funds not feloniously obtained.

(f) At the request of any person providing any portion of the consideration, pledge, security, deposit, or indemnification paid, given, made, or promised for its execution, the magistrate or judge, at an evidentiary hearing to determine the source of the funds, may close it to the general public to protect the person's right to privacy in his or her financial affairs.

(g) If the declaration, having been filed with a magistrate or judge, is not acted on within 24 hours, the defendant shall be released from custody upon posting of the amount of bail set.

(h) Nothing in this code shall deny the right of the defendant, either personally or through his or her attorney, bail agent licensed by the Department of Insurance, admitted surety insurer licensed by the Department of Insurance, friend, or member of his or her family from making an application to the magistrate or judge for the release of the defendant on bail.

(i) The bail of any defendant found to have willfully misled the court regarding the source of bail may be increased as a result of the willful misrepresentation. The misrepresentation may be a factor considered in any subsequent bail hearing.

(j) If a defendant has met the burden under subdivision (c), and a defendant will be released from custody upon the issuance of a bail bond issued pursuant to authority of Section 1269 or 1269b by any admitted surety insurer or any bail agent, approved by the Insurance Commissioner, the magistrate or judge shall vacate the holding order imposed under subdivision (b) upon the condition that the consideration for the bail bond is approved by the court.

(k) As used in this section, "feloniously obtained" means any consideration, pledge, security, deposit, or indemnification paid, given, made, or promised for its execution which is possessed, received, or obtained through an unlawful act, transaction, or occurrence constituting a felony.

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 727

An act to add Sections 2418 and 2418.1 to the Vehicle Code, relating to vehicles.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. This act shall be known and may be cited as the California North American Free Trade Agreement (NAFTA) Conformity Act.

SEC. 2. The Legislature finds and declares that there is a concern that under the North American Free Trade Agreement commercial vehicles from Mexico will be permitted on California highways without being required to meet proper safety and pollution standards.

SEC. 3. Section 2418 is added to the Vehicle Code, to read:

2418. The department shall adopt reasonable rules and regulations to ensure that all foreign commercial vehicles entering into, and operating within, this state meet those standards already in effect for other commercial vehicles and shall address, but not be limited to, the following concerns:

(a) Vehicle maintenance.

(b) Maximum hours of service for drivers.

(c) Insurance.

(d) Enforcement of criminal, civil, and administrative actions, including, but not limited to, impoundment of vehicles for second or subsequent violations of rules and regulations adopted under this section.

SEC. 4. Section 2418.1 is added to the Vehicle Code, to read:

2418.1. For purposes of enforcing the provisions of Section 2418, the department and the State Air Resources Board shall, to the maximum extent possible, conduct vehicle safety and emissions inspections at the California-Mexican border crossings. Inspections shall be conducted at the Otay Mesa and Calexico commercial vehicle inspection facilities operated by the department and at other random roadside locations as determined by the department, in consultation with the board. Inspections for safety and emissions shall be consistent with the inspection procedures specified in Title 13 (commencing with Section 2175) of the California Code of Regulations as they pertain to vehicle inspections.

SEC. 5. Sections 3 and 4 of this act shall become operative only if funds are appropriated in the Budget Act of 1998 to carry out those provisions of the act.

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

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

CHAPTER 728

An act to amend Section 1585.2 of the Health and Safety Code, relating to health facilities.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Today's long-term health care facilities must adapt their services to a broader range of individuals with more divergent and complex health care needs.

(2) Facilities are constantly exploring ways to attract qualified medical professionals such as physicians and dentists into their buildings to care for these medically complex patients.

(3) To aid in the transition to this higher acuity patient population, long-term health care facilities must be able to appeal to medical professionals by providing more diversified service opportunities for them within the facility setting.

(4) Physicians have expressed a greater willingness to work in long-term health care facilities if they have the ability to provide different health care services to a larger more diverse clientele.

(b) It is the intent of the Legislature in enacting the act adding this section to authorize long-term health care facilities licensed to provide adult day health care to provide adult day health care within their facility, thereby permitting these long-term health care facilities to attract more medical professionals into their buildings

and provide more diversified services to their patient population and surrounding community.

SEC. 2. Section 1585.2 of the Health and Safety Code is amended to read:

1585.2. (a) Any operator of a health facility licensed to provide adult day health care under this chapter shall provide that adult day health care as a separate program as determined by the State Department of Health Services.

(b) Any operator of a clinic or community care facility licensed to provide adult day health care under this chapter shall provide that adult day health care as an independent program that is located in a separate, freestanding facility or in a distinct part of the clinic or community care facility.

(c) The State Department of Health Services and the State Department of Social Services shall together explore the feasibility of a dual licensure process for combined adult day health care and social day care centers. A report shall be submitted to the Legislature regarding the feasibility of a single survey process. The State Department of Health Services shall have the primary responsibility for the development of this report.

SEC. 3. Section 1585.2 of the Health and Safety Code is amended to read:

1585.2. (a) Any operator of a health facility licensed to provide adult day health care under this chapter shall provide that adult day health care as a separate program as determined by the State Department of Health Services.

(b) Any operator of a clinic or community care facility licensed to provide adult day health care under this chapter shall provide that adult day health care as an independent program that is located in a separate, freestanding facility or in a distinct part of the clinic or community care facility.

SEC. 4. Section 3 of this bill incorporates amendments to Section 1585.2 of the Health and Safety Code proposed by both this bill and AB 1817. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 1585.2 of the Health and Safety Code, and (3) this bill is enacted after AB 1817, in which case Section 2 of this bill shall not become operative.

CHAPTER 729

An act to add Sections 1531.2 and 1584 to the Health and Safety Code, relating to day care centers.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 1531.2 is added to the Health and Safety Code, to read:

1531.2. (a) Upon the filing by the department of emergency regulations with the Secretary of State, an adult day care facility or an adult day support center, as defined in Division 6 of Title 22 of the California Code of Regulations, or Sections 1502 and 1502.2, that provides care and supervision for adults with Alzheimer's disease and other dementias may install for the safety and security of these persons secured perimeter fences or egress control devices of the time-delay type on exit doors if they meet all of the requirements for additional safeguards required by those regulations. The initial adoption of new emergency regulations on and after January 1, 1999, shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

(b) As used in this section, "egress control device" means a device that precludes the use of exits for a predetermined period of time. An egress control device shall not delay any client's departure from the facility for longer than 30 seconds. Facility staff may attempt to redirect a client who attempts to leave the facility.

(c) A facility that installs an egress control device pursuant to this section shall meet all of the following requirements:

(1) The facility shall be subject to all fire and building codes, regulations, and standards applicable to adult day care facilities and adult day support centers using egress control devices or secured perimeter fences and before using an egress control device shall receive a fire clearance from the fire authority having jurisdiction for the egress control devices.

(2) The facility shall require any client entering the facility to provide documentation of a diagnosis by a physician of Alzheimer's disease or other dementias, if such a diagnosis has been made. For purposes of this section, Alzheimer's disease shall include dementia and related disorders that increase the tendency to wander, decrease hazard awareness, and decrease the ability to communicate.

(3) The facility shall provide staff training regarding the use and operation of the egress control devices used by the facility, the protection of clients' personal rights, wandering behavior and acceptable methods of redirection, and emergency evacuation procedures for persons with dementia.

(4) All admissions to the facility shall continue to be voluntary on the part of the client or with the lawful consent of the client's conservator or a person who has the authority to act on behalf of the client. Persons who have the authority to act on behalf of a client may include the client's spouse, relative or relatives, or designated care giver or care givers.

(5) Any client entering a facility pursuant to this section who does not have a conservator or does not have a person with the authority to act on his or her behalf shall sign a statement of voluntary entry. The facility shall retain the original statement in the client's file at the facility.

(6) The use of egress control devices or secured perimeter fences shall not substitute for adequate staff. Staffing ratios shall at all times meet the requirements of applicable regulations.

(7) Emergency fire and earthquake drills shall be conducted at least once every three months, or more frequently as required by a county or city fire department or local fire prevention district. The drills shall include all facility staff and volunteers providing client care and supervision.

(8) The facility shall develop a plan of operation approved by the department that includes a description of how the facility is to be equipped with egress control devices that are consistent with regulations adopted by the State Fire Marshal pursuant to Section 13143. The plan shall include, but not be limited to, all of the following:

(A) A description of how the facility will provide training to staff regarding the use and operation of the egress control device utilized by the facility.

(B) A description of how the facility will ensure the protection of the residents' personal rights consistent with Sections 4502, 4503, and 4504 of the Welfare and Institutions Code.

(C) A description of the facility's emergency evacuation procedures for persons with Alzheimer's disease and other dementias.

(d) This section does not require an adult day care facility or an adult day support center to use secured perimeters or egress control devices in providing care for persons with Alzheimer's disease or other dementias.

(e) The department shall adopt regulations to implement this section in accordance with those provisions of the Administrative Procedure Act contained in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(f) The State Fire Marshal may also adopt regulations to implement this section.

SEC. 2. Section 1584 is added to the Health and Safety Code, to read:

1584. (a) An adult day health care center that provides care for adults with Alzheimer's disease and other dementias may install for the safety and security of those persons secured perimeter fences or egress control devices of the time-delay type on exit doors.

(b) As used in this section, "egress control device" means a device that precludes the use of exits for a predetermined period of time. These devices shall not delay any participant's departure from the

center for longer than 30 seconds. Center staff may attempt to redirect a participant who attempts to leave the center.

(c) Adult day health care centers installing security devices pursuant to this section shall meet all of the following requirements:

(1) The center shall be subject to all fire and building codes, regulations, and standards applicable to adult day health care centers using egress control devices or secured perimeter fences and shall receive a fire clearance from the fire authority having jurisdiction for the egress control devices or secured perimeter fences.

(2) The center shall maintain documentation of diagnosis by a physician of a participant's Alzheimer's disease or other dementia.

(3) The center shall provide staff training regarding the use and operation of the egress control devices utilized by the center, the protection of participants' personal rights, wandering behavior and acceptable methods of redirection, and emergency evacuation procedures for persons with dementia.

(4) All admissions to the center shall continue to be voluntary on the part of the participant or with consent of the participant's conservator, an agent of the participant's with a durable power of attorney, or other person who has the authority to act on behalf of the participant. Persons who have the authority to act on behalf of the participant include the participant's spouse or closest available relative.

(5) The center shall inform all participants, conservators, agents, and persons who have the authority to act on behalf of participants of the use of security devices. The center shall maintain a signed participation agreement indicating the use of the devices and the consent of the participant, conservator, agent, or person who has the authority to act on behalf of the participant. The center shall retain the original statement in the participant's files at the center.

(6) The use of egress control devices or secured perimeter fences shall not substitute for adequate staff. Staffing ratios shall at all times meet the requirements of applicable regulations.

(7) Emergency fire and earthquake drills shall be conducted at least once every three months, or more frequently as required by a county or city fire department or local fire prevention district. The drills shall include all center staff and volunteers providing participant care and supervision. This requirement does not preclude drills with participants as required by regulations.

(8) The center shall develop a plan of operation approved by the department that includes a description of how the center is to be equipped with egress control devices or secured perimeter fences that are consistent with regulations adopted by the State Fire Marshal pursuant to Section 13143. The plan shall include, but not be limited to, the following:

(A) A description of how the center will provide training for staff regarding the use and operation of the egress control device utilized by the center.

(B) A description of how the center will ensure the protection of the participant's personal rights consistent with applicable regulations.

(C) A description of the center's emergency evacuation procedures for persons with Alzheimer's disease and other dementias.

(d) This section does not require an adult day health care center to use security devices in providing care for persons with Alzheimer's disease and other dementias.

CHAPTER 730

An act to amend Section 13113.9 of, and to add Sections 13114.1, 13114.2, and 13114.3 to, the Health and Safety Code, relating to housing.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 13113.9 of the Health and Safety Code is amended to read:

13113.9. (a) For the purposes of this section:

(1) "Burglar bars" are security bars located on the inside or outside of a door or window of a residential dwelling.

(2) "Residential dwelling" means a house, apartment, motel, hotel, or other type of residential dwelling subject to the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13) and a manufactured home, mobilehome, and multiunit manufactured housing as defined in the Mobilehome-Manufactured Housing Act of 1980 (Part 2 (commencing with Section 18000) of Division 13).

(b) On or before July 1, 1998, the State Fire Marshal shall develop and adopt regulations for the labeling and packaging of burglar bars addressing the requirements in the California Building Standards Code intended to promote safety in the event of a fire. For this purpose, the regulations shall include specification of the language to be printed on the packaging, the location of the language on the packaging, and the height and stroke of the print type to be utilized. The regulations shall direct the consumer or installer to contact the local fire department or local building official to determine whether the city or county requires that the burglar bars have a release mechanism on the outside for use by the fire department in the event of a fire emergency.

(c) Burglar bars shall not be sold in California at wholesale or retail unless the burglar bars are either labeled or their packaging contains

the warning information specified in the regulations adopted pursuant to subdivision (b).

(d) Any contractor or installer of burglar bars shall provide the owner of the residential dwelling a copy of the warning information required pursuant to subdivision (b) prior to installing burglar bars.

(e) No person shall install unopenable burglar bars on a residential dwelling (1) where the California Building Standards Code requires openable burglar bars for emergency escape or rescue, or (2) on mobilehomes, manufactured homes, or multiunit manufactured housing unless at least one window or door to the exterior in each bedroom is openable for emergency escape or rescue.

SEC. 2. Section 13114.1 is added to the Health and Safety Code, to read:

13114.1. To the extent that resources are available, the State Fire Marshal shall prepare and distribute for use by local agencies, community groups, and private firms, public education materials about the dangers of illegal burglar bars. These public education materials shall use multiple media, including Braille, 18-point type, cassette tape, and computer disk for those who are print impaired, and multiple languages, as the State Fire Marshal determines appropriate.

SEC. 3. Section 13114.2 is added to the Health and Safety Code, to read:

13114.2. (a) On or before September 1, 1999, the State Fire Marshal shall adopt regulations and standards to control the quality and installation of burglar bars and safety release mechanisms installed, marketed, distributed, offered for sale, or sold in this state.

(b) On and after October 1, 1999, no person shall install, market, distribute, offer for sale, or sell burglar bars and safety release mechanisms in this state unless the burglar bars and safety release mechanisms have been approved by a testing laboratory recognized by the State Fire Marshal.

(c) As used in this section:

(1) "Burglar bars" means security bars located on the inside or outside of a door or window of a residential dwelling.

(2) "Residential dwelling" means a house, apartment, motel, hotel, or other type of residential dwelling subject to the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13) and a manufactured home, mobilehome, and multiunit manufactured housing as defined in the Mobilehomes-Manufactured Housing Act of 1980 (Part 2 (commencing with Section 18000) of Division 13).

SEC. 4. Section 13114.3 is added to the Health and Safety Code, to read:

13114.3. (a) Notwithstanding any other provision of law, on and after January 1, 1999, no burglar bars shall be installed or maintained on any residential dwelling that is owned or leased by a public agency, unless the burglar bars meet current state and local

requirements, as applicable, for burglar bars and safety release mechanisms.

(b) As used in this section:

(1) "Burglar bars" means security bars located on the inside or outside of a door or window of a residential dwelling.

(2) "Public agency" means any of the following:

(A) A state agency, department, board, or commission.

(B) The University of California.

(C) A local agency, including, but not limited to, a city, including a charter city, county, city and county, community redevelopment agency, housing authority, special district, or any other political subdivision of the state.

(3) "Residential dwelling" means a house, apartment, motel, hotel, or other type of residential dwelling subject to the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13) and a manufactured home, mobilehome, and multiunit manufactured housing as defined in the Mobilehomes-Manufactured Housing Act of 1980 (Part 2 (commencing with Section 18000) of Division 13).

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 731

An act to amend Section 14664 of, and to add Section 14615.1 to, the Government Code, to add Article 6.5 (commencing with Section 10389.1) to Chapter 2 of Part 2 of Division 2 of the Public Contract Code, and to amend Section 2 of Chapter 625 of the Statutes of 1991, Section 1 of Chapter 648 of the Statutes of 1992, Section 1 of Chapter 317 of the Statutes of 1993, and Section 1 of Chapter 391 of the Statutes of 1994, relating to state property.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 14615.1 is added to the Government Code, to read:

14615.1. Where the Legislature directs or authorizes the department to maintain, develop, or prescribe processes, procedures, or policies in connection with the administration of its duties under this chapter, Chapter 2 (commencing with Section 14650), or the State Contract Act (Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code), the action by the department shall be exempt from the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500)). This section shall apply to actions taken by the department with respect to the State Administrative Manual and the State Contracting Manual.

SEC. 1.1. Section 14664 of the Government Code is amended to read:

14664. (a) The director may execute grants to real property belonging to the state in the name and upon behalf of the state, whenever the sale or exchange of real property is authorized or contemplated by law, if no other state agency is specifically authorized and directed to execute the grants. The director may also execute deeds or any other instruments necessary to correct erroneous descriptions on deeds by which the state acquired title.

(b) (1) Notwithstanding any other provision of law, upon the written request and consent of the state agency with control or jurisdiction over the property concerned, the director may sell, convey, or exchange properties that are not needed by any state agency at fair market value following a 30-day notice to the Joint Legislative Budget Committee and the applicable Members of the Senate and Assembly who represent the district in which the properties are located, under any of the following circumstances:

(A) To sell or convey small portions of state property, not to exceed five acres, to a local governmental agency for the purpose of utility rights- of-way, drainage ditches, road widening, including, but not limited to, curbs, gutters, sidewalks, and small parking lots, and other public improvements.

(B) To sell private property with a fair market value of up to one million dollars ($1,000,000) received by the state through the office of the Attorney General or another state agency as the result of a foreclosure, seizure, or court action.

(C) To sell, convey, or exchange state property that is being encroached on by an adjacent landowner, where the adjacent landowner and both the state agency with control or jurisdiction over the property concerned and the Attorney General agree that the best

manner in which to resolve the matter is through a sale of the property or for an exchange of property of equal value.

(D) To sell, convey, or exchange any parcel of state property not needed by any state agency with a fair market value of less than twenty-five thousand dollars ($25,000).

(2) Any parcel described in subparagraph (B) or (D) shall be disposed of in the identical manner as state property disposed of pursuant to Section 11011.

(3) All funds received by the state pursuant to this subdivision shall be handled in the identical manner as funds received from state property disposed of pursuant to Section 11011.

SEC. 1.2. Article 6.5 (commencing with Section 10389.1) is added to Chapter 2 of Part 2 of Division 2 of the Public Contract Code, to read:

Article 6.5. State Surplus Personal Property

10389.1. The Department of General Services, if feasible and consistent with existing law, shall first offer appropriate state surplus personal property to school districts prior to offering that property to the public, except for property more appropriately suited for public safety uses. The department may offer school districts state surplus personal property at less than fair market value, if it is determined by the Director of General Services to be in the best interests of the state. The department shall develop policies and procedures for the implementation of this article.

SEC. 2. Section 2 of Chapter 625 of the Statutes of 1991, as amended by Chapter 784 of the Statutes of 1997, 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 terms and conditions and subject to reservations and exceptions that the director 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 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 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. 3. Section 1 of Chapter 648 of the Statutes of 1992, as amended by Chapter 193 of the Statutes of 1996, is amended to read:

Section 1. The Director of General Services, with the approval of the State Public Works Board, may sell, exchange, convey, or lease for current market value or for any lesser consideration authorized by law and upon terms and conditions and subject to reservations and exceptions that the director determines are in the best interest of the state, all or any part of the following real property:

Parcel 2. A strip of land approximately 8 feet wide and 411.9 feet long bordering Ramona Ave, in the City of Sacramento, County of Sacramento.

SEC. 4. 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 terms and conditions and subject to reservations and exceptions that the director determines are in the best interest of the state, all or any part of the following real property:

Parcel 3. Approximately 0.96 acre, with a structure used by the Employment Development Department, at 233 E. Commonwealth Avenue, Fullerton, Orange 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. 5. Section 1 of Chapter 391 of the Statutes of 1994 is amended to read:

Section 1. 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 terms and conditions and subject to reservations and

exceptions that the director determines are in the best interest of the state, all or any part of the following real property:

Parcel 1. Approximately 0.45 acre, with a structure used by the State Board of Equalization, located at 233 North Second Street, Covina, Los Angeles County.

Parcel 2. Approximately 0.53 acre of vacant land adjacent to the California Highway Patrol office, located at 430 South Broadway, Blythe, Riverside County.

Parcel 4. Approximately 0.57 acre, with a structure used by the Employment Development Department, located at 1640 West "F" Street, Oakdale, Stanislaus County.

Parcel 5. Approximately 1.84 acres of unimproved land adjacent to the Employment Development Department office, located at 2348 Baldwin Avenue, Oroville, Butte County.

Parcel 6. Approximately 3.17 acres of improved land, being a portion of the California State Prison at Folsom, Sacramento County.

SEC. 6. The Director of General Services may sell, exchange, lease, or transfer for current market value or for any lesser consideration authorized by law and upon terms and conditions and subject to reservations and exceptions that the director determines are in the best interest of the state, all or any part of the following real property:

Parcel 1. Approximately 1.47 acres improved with a single story office building used by the Employment Development Department, located at 1204 E Street, Marysville, Yuba County.

Parcel 2. Approximately 1.58 acres improved with a single story office building used by the Employment Development Department, located at 343 22nd Street, Richmond, Contra Costa County.

SEC. 7. The Director of General Services may sell to the County of Amador for current market value and upon terms and conditions and subject to reservations and exceptions that the director determines are in the best interest of the state the following described real property: approximately 0.54 acre of vacant land encumbered with a parking lot easement to the benefit of Amador County being a portion of the Department of Forestry and Fire Protection's Sutter Hill Forest Fire Station located one mile south of Sutter Creek on Highway 49 in Amador County.

SEC. 8. The Director of General Services may sell or exchange for a 1.0 acre parcel of land containing communications facilities, currently leased to the Department of Forestry and Fire Protection through the year 2012, upon terms and conditions and subject to reservations and exceptions that the director determines are in the best interest of the state, the following described real property: approximately 1.31 acres improved with a Department of Forestry and Fire Protection lookout tower and miscellaneous improvements located at Call Mountain, San Benito County. Any sale or exchange shall be based on the fair market value of the state-owned parcel.

SEC. 9. The Director of General Services, with the approval of the Department of the Military and the State Public Works Board, may convey to the Roman Catholic Bishop, Sacramento a corporation sole/St. Francis High School, the real property located at 1013 58th Street in the City of Sacramento, known as the 58th Street Armory, comprising approximately six acres. Consideration for exchange of the real property shall be a replacement facility of size and quality specified by the Department of the Military constructed to National Guard bureau criteria on other state or federal lands available to the Department of the Military and cash as necessary to equalize the transaction and reimburse the Department of General Services for its costs. In the event that the costs of design, appraisals, state administrative costs, and construction exceed the value of the 58th Street Armory, the Roman Catholic Bishop, Sacramento a corporation sole/St. Francis High School, shall be obligated to pay the costs, and the state shall have no obligation and shall not pay for any costs associated with the replacement facility. The exchange agreement shall be under terms and conditions that the Director of General Services determines to be in the best interest of the state. The exchange agreement shall not be effective until the improvements are certified by the state for occupancy, which shall not exceed three years from the date of the exchange agreement; however, this period may be extended in the event of damage, destruction, or acts of God.

SEC. 10. The Director of Parks and Recreation, with the approval of the Director of General Services, may exchange real property of approximately 10 acres at California Citrus State Historic Park in Riverside, Riverside County, with the City of Riverside for real property of equal value, on the terms and conditions and subject to the reservations and exceptions that may be in the best interest of the state.

SEC. 11. (a) Notices of every public sale shall be posted on the property to be sold pursuant to Sections 6 to 8, inclusive, of 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 Sections 6 to 8, inclusive, of 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. 12. (a) The Department of General Services shall be reimbursed for any cost or expense incurred in the disposition of any parcels pursuant to Sections 6 to 8, inclusive, of this act.

(b) The net proceeds of any moneys received from the disposition of any parcels pursuant to Sections 6 to 8, inclusive, of this act shall be deposited in the General Fund and be available for appropriation in accordance with Section 15863 of the Government Code, except for the net proceeds of moneys received from the disposition of

Parcels 1 and 2 of Section 6 of this act, which shall be deposited in the Employment Development Department Building Fund.

SEC. 13. As to any property sold pursuant to Sections 6 to 8, inclusive, of 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 Sections 6 to 8, inclusive, of this act consisting of more than 15 acres, the director 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. 14. The authorization to sell, exchange, or lease the following properties is rescinded by Sections 2 to 5, inclusive, of this act, as the concerned state agencies have reported that the following properties are no longer considered surplus:

(a) Parcel 3 of Section 2 of Chapter 625 of the Statutes of 1991.
(b) Parcel 9 of Section 2 of Chapter 625 of the Statutes of 1991.
(c) Parcel 1 of Section 1 of Chapter 648 of the Statutes of 1992.
(d) Parcel 3 of Section 1 of Chapter 648 of the Statutes of 1992.
(e) Parcel 1 of Section 1 of Chapter 317 of the Statutes of 1993.
(f) Parcel 4 of Section 1 of Chapter 317 of the Statutes of 1993.
(g) Parcel 3 of Section 1 of Chapter 391 of the Statutes of 1994.

CHAPTER 732

An act to add Section 12406.5 to the Insurance Code, relating to title insurance.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 12406.5 is added to the Insurance Code, to read:

12406.5. (a) The commissioner shall develop, publish, and disseminate a brochure for consumers who are required to buy title insurance as part of a residential real estate transaction. The brochure shall inform consumers that competing title insurers and underwritten title companies may offer different costs or services for the title insurance required in the transaction. The brochure shall also inform consumers about the potential availability of discounts in

cases involving first-time buyers, short-term rates if a home is resold in less than a five-year period, concurrent rates if the company is providing both the homeowners' and the lenders' title insurance policies in the transaction, subdivision bulk rates if the property being purchased is in a new subdivision, refinancing discounts, short-term financing rates, and discounts that may be available in other special cases. The brochure shall encourage consumers to contact more than one title insurer or underwritten title company in order to compare costs and services.

(b) The brochure developed pursuant to subdivision (a) shall include the department's toll-free consumer assistance telephone number and shall invite consumers to call the department if they need assistance.

(c) The department shall display the brochure developed pursuant to subdivision (a) on its Internet website, and the brochure shall include the department's Internet address.

(d) The brochure developed pursuant to subdivision (a) shall also educate consumers about laws involving unlawful commissions and rebates associated with the placement or referral of title insurance and shall encourage consumers to report to the department, to the Department of Real Estate, and to any other appropriate government agencies any suspected incidents of probable unlawful commissions or rebates subject to Article 6.5 (commencing with Section 12414).

(e) One copy of the brochure developed pursuant to this section shall be made available to a member of the public at no cost, and the department may charge its actual cost for providing additional copies. The brochure shall be made available for reproduction at no cost to any vendor who wishes to publish the brochure as written, provided any vendor who wishes to publish the brochure agrees to submit any documents containing the brochure to the department prior to publication.

SEC. 2. This act shall become operative only if Assembly Bill 2492 of the 1997–98 Regular Session is also enacted and becomes operative on or before January 1, 1999.

CHAPTER 733

An act to add Section 11466.24 to, and to add and repeal Section 16122.5 of, the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 11466.24 is added to the Welfare and Institutions Code, to read:

11466.24. (a) In accordance with this section, a county shall collect an overpayment, discovered on or after January 1, 1999, made to a foster family home, an approved home of a relative, or an approved home of a nonrelative legal guardian, for any period of time in which the foster child was not cared for in that home, unless any of the following conditions exist, in which case a county shall not collect the overpayment:

(1) The cost of the collection exceeds that amount of the overpayment that is likely to be recovered by the county. The cost of collecting the overpayment and the likelihood of collection shall be documented by the county.

(2) The child was temporarily removed from the home and payment was owed to the provider to maintain the child's placement.

(3) The overpayment was exclusively the result of a county administrative error or both the county welfare department and the provider were unaware of the information that would establish that the foster child was not eligible for foster care benefits.

(4) The provider did not have knowledge of, and did not contribute to, the cause of the overpayment.

(b) (1) After notification by a county of an overpayment to a foster family home, an approved home of a relative, or an approved home of a nonrelative legal guardian, and a demand letter for repayment, the foster parent, approved relative, or approved nonrelative legal guardian may request the county welfare department to review the overpayment determination in an informal hearing, or may file with the department a request for a hearing to appeal the overpayment determination. Requesting an informal hearing shall not preclude a payee from seeking a formal hearing at a later date. The county welfare department shall dismiss the overpayment repayment request if it determines the action to be incorrect through an initial review prior to a state hearing, or through a review in an informal hearing held at the request of the foster parent, relative, or nonrelative legal guardian.

(2) If a review does not result in the dismissal of the overpayment, or a hearing is not requested, or on the 30th day following a formal appeal hearing decision, whichever is later, foster family home overpayment shall be sustained for collection purposes.

(3) The department shall adopt regulations that ensure that the best interests of the child shall be the primary concern of the county welfare director in any repayment agreement.

(c) (1) The department shall develop regulations for recovery of overpayments made to any foster family home, approved home of a relative, or approved home of a nonrelative legal guardian. The regulations shall prioritize collection methods, that shall include

voluntary repayment agreement procedures and involuntary overpayment collection procedures. These procedures shall take into account the amount of the overpayment and a minimum required payment amount.

(2) A county shall not collect an overpayment through the use of an involuntary payment agreement unless a foster family home, an approved home of a relative, or an approved home of a nonrelative legal guardian has rejected the offer of a voluntary overpayment agreement, or has failed to comply with the terms of the voluntary overpayment agreement.

(3) A county shall not be permitted to collect an overpayment through the offset of payments due to a foster family home, an approved home of a relative, or an approved home of a nonrelative legal guardian unless this method of repayment is requested by the provider in a voluntary repayment agreement, or other circumstances defined by the department by regulation.

(d) If a provider is successful in its appeal of a collected overpayment, it shall be repaid the collected overpayment plus simple interest based on the Surplus Money Investment Fund.

(e) A county may not collect interest on the repayment of an overpayment.

(f) There shall be a one-year statute of limitations from the date upon which the county determined that there was an overpayment.

SEC. 2. Section 16122.5 is added to the Welfare and Institutions Code, to read:

16122.5. (a) Notwithstanding the limitations placed on payments in Section 16122, the state may, upon request by Sacramento County, provide supplemental payments to private adoption agencies that serve older children or children with special and significant needs whose adoption is unlikely without services from those adoption agencies. The cost of the supplemental payments shall be borne by the requesting county.

(b) Nothing in this section shall be construed to authorize or permit the displacement of existing county workers.

(c) This section shall become inoperative on July 1, 2001, and, as of January 1, 2002, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2002, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, within the meaning of Section 17556 of the Government Code.

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

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

CHAPTER 734

An act to amend Section 66025 of the Education Code, relating to postsecondary education.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 66025 of the Education Code is amended to read:

66025. (a) (1) Systemwide fees charged to resident undergraduate students at the University of California and the California State University shall be reduced for the 1998–99 fiscal year by 5 percent below the level charged during the 1997–98 fiscal year, and the systemwide fees charged to those students for the 1999–2000 fiscal year shall be the same as the systemwide fees established for those students for the 1998–99 fiscal year. Systemwide education and registration fees charged to resident graduate students at the University of California and the California State University for the 1999–2000 fiscal year shall be reduced by 5 percent below the level charged those resident students for the 1997–98 fiscal year. This subdivision does not apply to resident students pursuing a course of study leading to a professional degree who are subject to a supplemental fee pursuant to the policy of the University of California.

(2) Notwithstanding Section 76300, the fee per unit per semester charged to resident undergraduate students at the California Community Colleges during each of the 1998–99 and 1999–2000 academic years shall be twelve dollars ($12).

(b) No provision of this section shall apply to the University of California except to the extent that the Regents of the University of California, by appropriate resolution, make that provision applicable.

SEC. 2. (a) Any reduction in systemwide fees charged to resident undergraduate students in the 1998–99 fiscal year pursuant to Section 66025 of the Education Code shall take effect only if the Legislature appropriates funds in the 1998–99 fiscal year sufficient to fully reimburse the University of California, the California State University, and the California Community Colleges for any reductions in fee revenues.

(b) Any reduction in systemwide and registration fees charged to resident graduate students in the 1999–2000 fiscal year pursuant to Section 66025 of the Education Code shall take effect only if the

Legislature appropriates funds in the 1999–2000 fiscal year sufficient to fully reimburse the University of California, the California State University, and the California Community Colleges for any reductions in fee revenues.

CHAPTER 735

An act to amend Sections 128695, 128700, 128725, 128735, 128755, 128760, 128782, and 128815 of, to amend, add, and repeal Section 127280 of, and to add Sections 128681, 128736, 128737, 128738, and 128812 to, the Health and Safety Code, relating to health data, and making an appropriation therefor.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Hospitals are a vital component of the state's health care system and, accordingly, are required by the state to file a variety of cost, utilization, and operational reports. These reports currently do no include patient care information involving emergency room and ambulatory surgery services.

(b) The information collected from hospitals serves a wide range of purposes, including management of state health care delivery and public health programs, efficient administration of hospital services, continuous improvement in the quality of care provided by hospitals, effective procurement of hospital services, and improvements in access to needed health care.

(c) It is in the interest of the hospital industry and all residents of the state that needed information about hospital services be collected from hospitals in the most efficient and effective manner possible.

(d) It is in the interest of the hospital and ambulatory surgical industries, as well as all the residents of the state, that needed information about ambulatory surgery services be collected for the same purposes and in the most efficient and effective manner possible.

(e) It is the intent of the Legislature that future efforts to collect information on ambulatory surgery services will include procedures performed in physician offices.

SEC. 2. Section 127280 of the Health and Safety Code is amended to read:

127280. (a) Every health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, except a health facility owned and operated by the state, shall be charged a fee of not

more than 0.035 percent of the health facility's gross operating cost for the provision of health care services for its last fiscal year ending prior to the effective date of this section. Thereafter the office shall set for, charge to, and collect from all health facilities, except health facilities owned and operated by the state, a special fee, that shall be due on July 1, and delinquent on July 31 of each year beginning with the year 1977, of not more than 0.035 percent of the health facility's gross operating cost for provision of health care services for its last fiscal year that ended on or before June 30 of the preceding calendar year. Each year the office shall establish the fee to produce revenues equal to the appropriation to pay for the functions required to be performed pursuant to this chapter or Chapter 1 (commencing with Section 128675) of Part 5 by the office, the area and local health planning agencies, and the Advisory Health Council.

Health facilities that pay fees shall not be required to pay, directly or indirectly, the share of the costs of those health facilities for which fees are waived.

(b) There is hereby established the California Health Data and Planning Fund within the office for the purpose of receiving and expending fee revenues collected pursuant to this chapter.

(c) Any amounts raised by the collection of the special fees provided for by subdivision (a) of this section that are not required to meet appropriations in the Budget Act for the current fiscal year shall remain in the California Health Data and Planning Fund and shall be available to the office and the council in succeeding years when appropriated by the Legislature, for expenditure under the provisions of this chapter, and Chapter 1 (commencing with Section 128675) of Part 5 and shall reduce the amount of the special fees that the office is authorized to establish and charge.

(d) No health facility liable for the payment of fees required by this section shall be issued a license or have an existing license renewed unless the fees are paid. New, previously unlicensed health facilities shall be charged a pro rata fee to be established by the office during the first year of operation.

The license of any health facility, against which the fees required by this section are charged, shall be revoked, after notice and hearing, if it is determined by the office that the fees required were not paid within the time prescribed by subdivision (a).

(e) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2002, deletes or extends that date.

SEC. 3. Section 127280 is added to the Health and Safety Code, to read:

127280. (a) Every health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, except a health facility owned and operated by the state, shall each year be charged a fee established by the office consistent with the requirements of this section.

(b) Every freestanding ambulatory surgery clinic as defined in Section 128700 shall each year be charged a fee established by the office consistent with the requirements of this section.

(c) The fee structure shall be established each year by the office to produce revenues equal to the appropriation to pay for the functions required to be performed pursuant to this chapter or Chapter 1 (commencing with Section 128675) of Part 5 by the office and the California Health Policy and Data Advisory Commission. The fee shall be due on July 1 and delinquent on July 31 of each year.

(d) The fee for a health facility that is not a hospital, as defined in subdivision (c) of Section 128700, shall be not more than 0.035 percent of the gross operating cost of the facility for the provision of health care services for its last fiscal year that ended on or before June 30 of the preceding calendar year.

(e) The fee for a hospital, as defined in subdivision (c) of Section 128700, shall be not more than 0.035 percent of the gross operating cost of the facility for the provision of health care services for its last fiscal year that ended on or before June 30 of the preceding calendar year.

(f) (1) The fee for a freestanding ambulatory surgery clinic shall be established at an amount equal to the number of ambulatory surgery data records submitted to the office pursuant to Section 128737 for encounters in the preceding calendar year multiplied by not more than fifty cents ($0.50).

(2) (A) For the calendar year 2002 only, a freestanding ambulatory surgery clinic shall estimate the number of records it will file pursuant to Section 128737 for the calendar year 2002 and shall report that number to the office by March 12, 2002. The estimate shall be as accurate as possible. The fee in the calendar year 2002 shall be established initially at an amount equal to the estimated number of records reported multiplied by fifty cents ($0.50) and shall be due on July 1 and delinquent on July 31, 2002.

(B) The office shall compare the actual number of records filed by each freestanding clinic for the calendar year 2002 pursuant to Section 128737 with the estimated number of records reported pursuant to subparagraph (A). If the actual number reported is less than the estimated number reported, the office shall reduce the fee of the clinic for calendar year 2003 by the amount of the difference multiplied by fifty cents ($0.50). If the actual number reported exceeds the estimated number reported, the office shall increase the fee of the clinic for calendar year 2003 by the amount of the difference multiplied by fifty cents ($0.50) unless the actual number reported is greater than 120 percent of the estimated number reported, in which case the office shall increase the fee of the clinic for calendar year 2003 by the amount of the difference, up to and including 120 percent of the estimated number, multiplied by fifty cents ($0.50), and by the amount of the difference in excess of 120 percent of the estimated number multiplied by one dollar ($1).

(g) There is hereby established the California Health Data and Planning Fund within the office for the purpose of receiving and expending fee revenues collected pursuant to this chapter.

(h) Any amounts raised by the collection of the special fees provided for by subdivisions (d), (e), and (f) that are not required to meet appropriations in the Budget Act for the current fiscal year shall remain in the California Health Data and Planning Fund and shall be available to the office and the commission in succeeding years when appropriated by the Legislature for expenditure under the provisions of this chapter and Chapter 1 (commencing with Section 128675) of Part 5, and shall reduce the amount of the special fees that the office is authorized to establish and charge.

(i) (1) No health facility liable for the payment of fees required by this section shall be issued a license or have an existing license renewed unless the fees are paid. A new, previously unlicensed, health facility shall be charged a pro rata fee to be established by the office during the first year of operation.

(2) The license of any health facility, against which the fees required by this section are charged, shall be revoked, after notice and hearing, if it is determined by the office that the fees required were not paid within the time prescribed by subdivision (c).

(j) This section shall become operative on January 1, 2002.

SEC. 4. Section 128681 is added to the Health and Safety Code, to read:

128681. The office shall conduct, under contract with a qualified consulting firm, a comprehensive review of the financial and utilization reports that hospitals are required to file with the office and similar reports required by other departments of state government, as appropriate. The contracting consulting firm shall have a strong commitment to public health and health care issues, and shall demonstrate fiscal management and analytical expertise. The purpose of the review is to identify opportunities to eliminate the collection of data that no longer serve any significant purpose, to reduce the redundant reporting of similar data to different departments, and to consolidate reports wherever practical. The contracting consulting firm shall evaluate specific reporting requirements, exceptions to and exemptions from the requirements, and areas of duplication or overlap within the requirements. The contracting consulting firm shall consult with a broad range of data users, including, but not limited to, consumers, payers, purchasers, providers, employers, employees, and the organizations that represent the data users. It is expected that the review will result in greater efficiency in collecting and disseminating needed hospital information to the public and will reduce hospital costs and administrative burdens associated with reporting the information.

SEC. 5. Section 128695 of the Health and Safety Code is amended to read:

128695. There is hereby created the California Health Policy and Data Advisory Commission to be composed of 13 members.

The Governor shall appoint nine members, one of whom shall be a hospital chief executive officer, one of whom shall be a chief executive officer of a hospital serving a disproportionate share of low-income patients, one of whom shall be a long-term care facility chief executive officer, one of whom shall be a freestanding ambulatory surgery clinic chief executive officer, one of whom shall be a representative of the health insurance industry involved in establishing premiums or underwriting, one of whom shall be a representative of a group prepayment health care service plan, one of whom shall be a representative of a business coalition concerned with health, and two of whom shall be general members. The Speaker of the Assembly shall appoint two members, one of whom shall be a physician and surgeon and one of whom shall be a general member. The Senate Rules Committee shall appoint two members, one of whom shall be a representative of a labor coalition concerned with health, and one of whom shall be a general member.

The Governor shall designate a member to serve as chairperson for a two-year term. No member may serve more than two, two-year terms as chairperson. All appointments shall be for four-year terms. No individual shall serve more than two, four-year terms.

SEC. 6. Section 128700 of the Health and Safety Code is amended to read:

128700. As used in this chapter, the following terms mean:

(a) "Ambulatory surgery procedures" mean those procedures performed on an outpatient basis in the general operating rooms, ambulatory surgery rooms, endoscopy units, or cardiac catheterization laboratories of a hospital or a freestanding ambulatory surgery clinic.

(b) "Commission" means the California Health Policy and Data Advisory Commission.

(c) "Emergency department" means, in a hospital licensed to provide emergency medical services, the location in which those services are provided.

(d) "Encounter" means a face-to-face contact between a patient and the provider who has primary responsibility for assessing and treating the condition of the patient at a given contact and exercises independent judgment in the care of the patient.

(e) "Freestanding ambulatory surgery clinic" means a surgical clinic that is licensed by the state under paragraph (1) of subdivision (b) of Section 1204.

(f) "Health facility" or "health facilities" means all health facilities required to be licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2.

(g) "Hospital" means all health facilities except skilled nursing, intermediate care, and congregate living health facilities.

(h) "Office" means the Office of Statewide Health Planning and Development.

(i) "Risk-adjusted outcomes" means the clinical outcomes of patients grouped by diagnoses or procedures that have been adjusted for demographic and clinical factors.

SEC. 7. Section 128725 of the Health and Safety Code is amended to read:

128725. The functions and duties of the commission shall include the following:

(a) Advise the office on the implementation of the new, consolidated data system.

(b) Advise the office regarding the ongoing need to collect and report health facility data and other provider data.

(c) Annually develop a report to the director of the office regarding changes that should be made to existing data collection systems and forms. Copies of the report shall be provided to the Senate Health and Human Services Committee and to the Assembly Health Committee.

(d) Advise the office regarding changes to the uniform accounting and reporting systems for health facilities.

(e) Conduct public meetings for the purposes of obtaining input from health facilities, other providers, data users, and the general public regarding this chapter and Chapter 1 (commencing with Section 127125) of Part 2 of Division 107.

(f) Advise the Secretary of Health and Welfare on the formulation of general policies which shall advance the purposes of this part.

(g) Advise the office on the adoption, amendment, or repeal of regulations it proposes prior to their submittal to the Office of Administrative Law.

(h) Advise the office on the format of individual health facility or other provider data reports and on any technical and procedural issues necessary to implement this part.

(i) Advise the office on the formulation of general policies which shall advance the purposes of Chapter 1 (commencing with Section 127125) of Part 2 of Division 107.

(j) Recommend, in consultation with a 12-member technical advisory committee appointed by the chairperson of the commission, to the office the data elements necessary for the production of outcome reports required by Section 128745.

(k) (1) The technical advisory committee appointed pursuant to subdivision (j) shall be composed of two members who shall be hospital representatives appointed from a list of at least six persons nominated by the California Association of Hospitals and Health Systems, two members who shall be physicians and surgeons appointed from a list of at least six persons nominated by the California Medical Association, two members who shall be registered nurses appointed from a list of at least six persons nominated by the California Nurses Association, one medical record practitioner who

shall be appointed from a list of at least six persons nominated by the California Health Information Association, one member who shall be a representative of a hospital authorized to report as a group pursuant to subdivision (d) of Section 128760, two members who shall be representative of California research organizations experienced in effectiveness review of medical procedures or surgical procedures, or both procedures, one member representing the Health Access Foundation, and one member representing the Consumers Union. Members of the technical advisory committee shall serve without compensation, but shall be reimbursed for any actual and necessary expenses incurred in connection with their duties as members of the technical advisory committee.

(2) The commission shall submit its recommendation to the office regarding the first of the reports required pursuant to subdivision (a) of Section 128745 no later than January 1, 1993. The technical advisory committee shall submit its initial recommendations to the commission pursuant to subdivision (d) of Section 128750 no later than January 1, 1994. The commission, with the advice of the technical advisory committee, may periodically make additional recommendations under Sections 128745 and 128750 to the office, as appropriate.

(*l*) (1) Assess the value and usefulness of the reports required by Sections 127285, 128735, and 128740. On or before December 1, 1997, the commission shall submit recommendations to the office to accomplish all of the following:

(A) Eliminate redundant reporting.

(B) Eliminate collection of unnecessary data.

(C) Augment data bases as deemed valuable to enhance the quality and usefulness of data.

(D) Standardize data elements and definitions with other health data collection programs at both the state and national levels.

(E) Enable linkage with, and utilization of, existing data sets.

(F) Improve the methodology and data bases used for quality assessment analyses, including, but not limited to, risk-adjusted outcome reports.

(G) Improve the timeliness of reporting and public disclosure.

(2) The commission shall establish a committee to implement the evaluation process. The committee shall include representatives from the health care industry, providers, consumers, payers, purchasers, and government entities, including the Department of Corporations, the departments that comprise the Health and Welfare Agency, and others deemed by the commission to be appropriate to the evaluation of the data bases. The committee may establish subcommittees including technical experts.

(3) In order to ensure the timely implementation of the provisions of the legislation enacted in the 1997–98 Regular Session that amended this part, the office shall present an implementation work plan to the commission. The work plan shall clearly define goals and

significant steps within specified timeframes that must be completed in order to accomplish the purposes of that legislation. The office shall make periodic progress reports based on the work plan to the commission. The commission may advise the Secretary of Health and Welfare of any significant delays in following the work plan. If the commission determines that the office is not making significant progress toward achieving the goals outlined in the work plan, the commission shall notify the office and the secretary of that determination. The commission may request the office to submit a plan of correction outlining specific remedial actions and timeframes for compliance. Within 90 days of notification, the office shall submit a plan of correction to the commission.

(m) (1) As the office and the commission deem necessary, the commission may establish committees and appoint persons who are not members of the commission to these committees as are necessary to carry out the purposes of the commission. Representatives of area health planning agencies shall be invited, as appropriate, to serve on committees established by the office and the commission relative to the duties and responsibilities of area health planning agencies. Members of the standing committees shall serve without compensation, but shall be reimbursed for any actual and necessary expenses incurred in connection with their duties as members of these committees.

(2) Whenever the office or the commission does not accept the advice of the other body on proposed regulations or on major policy issues, the office or the commission shall provide a written response on its action to the other body within 30 days, if so requested.

(3) The commission or the office director may appeal to the Secretary of Health and Welfare over disagreements on policy, procedural, or technical issues.

SEC. 8. Section 128735 of the Health and Safety Code is amended to read:

128735. Every organization that operates, conducts, or maintains a health facility, and the officers thereof, shall make and file with the office, at the times as the office shall require, all of the following reports on forms specified by the office that shall be in accord where applicable with the systems of accounting and uniform reporting required by this part, except the reports required pursuant to subdivision (g) shall be limited to hospitals:

(a) A balance sheet detailing the assets, liabilities, and net worth of the health facility at the end of its fiscal year.

(b) A statement of income, expenses, and operating surplus or deficit for the annual fiscal period, and a statement of ancillary utilization and patient census.

(c) A statement detailing patient revenue by payer, including, but not limited to, Medicare, Medi-Cal, and other payers, and revenue center except that hospitals authorized to report as a group pursuant

to subdivision (d) of Section 128760 are not required to report revenue by revenue center.

(d) A statement of cash-flows, including, but not limited to, ongoing and new capital expenditures and depreciation.

(e) A statement reporting the information required in subdivisions (a), (b), (c), and (d) for each separately licensed health facility operated, conducted, or maintained by the reporting organization, except those hospitals authorized to report as a group pursuant to subdivision (d) of Section 128760.

(f) Data reporting requirements established by the office shall be consistent with national standards, as applicable.

(g) A Hospital Discharge Abstract Data Record that includes all of the following:

(1) Date of birth.

(2) Sex.

(3) Race.

(4) ZIP Code.

(5) Patient social security number, if it is contained in the patient's medical record.

(6) Prehospital care and resuscitation, if any, including all of the following:

(A) "Do not resuscitate" (DNR) order at admission.

(B) "Do not resuscitate" (DNR) order after admission.

(7) Admission date.

(8) Source of admission.

(9) Type of admission.

(10) Discharge date.

(11) Principal diagnosis and whether the condition was present at admission.

(12) Other diagnoses and whether the conditions were present at admission.

(13) External cause of injury.

(14) Principal procedure and date.

(15) Other procedures and dates.

(16) Total charges.

(17) Disposition of patient.

(18) Expected source of payment.

(19) Elements added pursuant to Section 128738.

(h) It is the expressed intent of the Legislature that the patient's rights of confidentiality shall not be violated in any manner. Patient social security numbers and any other data elements that the office believes could be used to determine the identity of an individual patient shall be exempt from the disclosure requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(i) No person reporting data pursuant to this section shall be liable for damages in any action based on the use or misuse of patient-identifiable data that has been mailed or otherwise

transmitted to the office pursuant to the requirements of subdivision (g).

(j) A hospital shall use coding from the International Classification of Diseases in reporting diagnoses and procedures.

SEC. 9. Section 128736 is added to the Health and Safety Code, to read:

128736. (a) Each hospital shall file an Emergency Care Data Record for each patient encounter in a hospital emergency department. The Emergency Care Data Record shall include all of the following:

(1) Date of birth.
(2) Sex.
(3) Race.
(4) Ethnicity.
(5) ZIP Code.
(6) Patient social security number, if it is contained in the patient's medical record.
(7) Service date.
(8) Principal diagnosis.
(9) Other diagnoses.
(10) Principal external cause of injury.
(11) Other external cause of injury.
(12) Principal procedure.
(13) Other procedures.
(14) Disposition of patient.
(15) Expected source of payment.
(16) Elements added pursuant to Section 128738.

(b) It is the expressed intent of the Legislature that the patient's rights of confidentiality shall not be violated in any manner. Patient social security numbers and any other data elements that the office believes could be used to determine the identity of an individual patient shall be exempt from the disclosure requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(c) No person reporting data pursuant to this section shall be liable for damages in any action based on the use or misuse of patient-identifiable data that has been mailed or otherwise transmitted to the office pursuant to the requirements of subdivision (a).

(d) Data reporting requirements established by the office shall be consistent with national standards as applicable.

(e) This section shall become operative on January 1, 2002.

SEC. 10. Section 128737 is added to the Health and Safety Code, to read:

128737. (a) Each hospital and freestanding ambulatory surgery clinic shall file an Ambulatory Surgery Data Record for each patient encounter during which at least one ambulatory surgery procedure

is performed. The Ambulatory Surgery Data Record shall include all of the following:

(1) Date of birth.
(2) Sex.
(3) Race.
(4) Ethnicity.
(5) ZIP Code.
(6) Patient social security number, if it is contained in the patient's medical record.
(7) Service date.
(8) Principal diagnosis.
(9) Other diagnoses.
(10) Principal procedure.
(11) Other procedures.
(12) Principal external cause of injury, if known.
(13) Other external cause of injury, if known.
(14) Disposition of patient.
(15) Expected source of payment.
(16) Elements added pursuant to Section 128738.

(b) It is the expressed intent of the Legislature that the patient's rights of confidentiality shall not be violated in any manner. Patient social security numbers and any other data elements that the office believes could be used to determine the identity of an individual patient shall be exempt from the disclosure requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(c) No person reporting data pursuant to this section shall be liable for damages in any action based on the use or misuse of patient-identifiable data that has been mailed or otherwise transmitted to the office pursuant to the requirements of subdivision (a).

(d) Data reporting requirements established by the office shall be consistent with national standards as applicable.

(e) This section shall become operative on January 1, 2002.

SEC. 11. Section 128738 is added to the Health and Safety Code, to read:

128738. (a) The office, based upon review and recommendations of the commission and its appropriate committees, shall allow and provide for, in accordance with appropriate regulations, additions or deletions to the patient level data elements listed in subdivision (g) of Section 128735, Section 128736, and Section 128737, to meet the purposes of this chapter.

(b) Prior to any additions or deletions, all of the following shall be considered:

(1) Utilization of sampling to the maximum extent possible.
(2) Feasibility of collecting data elements.
(3) Costs and benefits of collection and submission of data.

(4) Exchange of data elements as opposed to addition of data elements.

(c) The office shall add no more than a net of 15 elements to each data set over any five-year period. Elements contained in the uniform claims transaction set or uniform billing form required by the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Sec. 300gg) shall be exempt from the 15-element limit.

(d) The commission and the office, in order to minimize costs and administrative burdens, shall consider the total number of data elements required from hospitals and freestanding ambulatory surgery clinics, and optimize the use of common data elements.

SEC. 12. Section 128755 of the Health and Safety Code is amended to read:

128755. (a) (1) Hospitals shall file the reports required by subdivisions (a), (b), (c), and (d) of Section 128735 with the office within four months after the close of the hospital's fiscal year except as provided in paragraph (2).

(2) If a licensee relinquishes the facility license or puts the facility license in suspense, the last day of active licensure shall be deemed a fiscal year end.

(3) The office shall make the reports filed pursuant to this subdivision available no later than three months after they were filed.

(b) (1) Skilled nursing facilities, intermediate care facilities, intermediate care facilities/developmentally disabled, and congregate living facilities, including nursing facilities certified by the state department to participate in the Medi-Cal program, shall file the reports required by subdivisions (a), (b), (c), and (d) of Section 128735 with the office within four months after the close of the facility's fiscal year, except as provided in paragraph (2).

(2) (A) If a licensee relinquishes the facility license or puts the facility licensure in suspense, the last day of active licensure shall be deemed a fiscal year end.

(B) If a fiscal year end is created because the facility license is relinquished or put in suspense, the facility shall file the reports required by subdivisions (a), (b), (c), and (d) of Section 128735 within two months after the last day of active licensure.

(3) The office shall make the reports filed pursuant to paragraph (1) available not later than three months after they are filed.

(4) (A) Effective for fiscal years ending on or after December 31, 1991, the reports required by subdivisions (a), (b), (c), and (d) of Section 128735 shall be filed with the office by electronic media, as determined by the office.

(B) Congregate living health facilities are exempt from the electronic media reporting requirements of subparagraph (A).

(c) A hospital shall file the reports required by subdivision (g) of Section 128735 as follows:

(1) For patient discharges on or after January 1, 1999, through December 31, 1999, the reports shall be filed semiannually by each

hospital or its designee not later than six months after the end of each semiannual period, and shall be available from the office no later than six months after the date that the report was filed.

(2) For patient discharges on or after January 1, 2000, through December 31, 2000, the reports shall be filed semiannually by each hospital or its designee not later than three months after the end of each semiannual period. The reports shall be filed by electronic tape, diskette, or similar medium as approved by the office. The office shall approve or reject each report within 15 days of receiving it. If a report does not meet the standards established by the office, it shall not be approved as filed and shall be rejected. The report shall be considered not filed as of the date the facility is notified that the report is rejected. A report shall be available from the office no later than 15 days after the date that the report is approved.

(3) For patient discharges on or after January 1, 2001, the reports shall be filed by each hospital or its designee for report periods and at times determined by the office. The reports shall be filed by online transmission in formats consistent with national standards for the exchange of electronic information. The office shall approve or reject each report within 15 days of receiving it. If a report does not meet the standards established by the office, it shall not be approved as filed and shall be rejected. The report shall be considered not filed as of the date the facility is notified that the report is rejected. A report shall be available from the office no later than 15 days after the date that the report is approved.

(d) The reports required by subdivision (a) of Section 128736 shall be filed by each hospital for report periods and at times determined by the office. The reports shall be filed by online transmission in formats consistent with national standards for the exchange of electronic information. The office shall approve or reject each report within 15 days of receiving it. If a report does not meet the standards established by the office, it shall not be approved as filed and shall be rejected. The report shall be considered not filed as of the date the facility is notified that the report is rejected. A report shall be available from the office no later than 15 days after the report is approved.

(e) The reports required by subdivision (a) of Section 128737 shall be filed by each hospital or freestanding ambulatory surgery clinic for report periods and at times determined by the office. The reports shall be filed by online transmission in formats consistent with national standards for the exchange of electronic information. The office shall approve or reject each report within 15 days of receiving it. If a report does not meet the standards established by the office, it shall not be approved as filed and shall be rejected. The report shall be considered not filed as of the date the facility is notified that the report is rejected. A report shall be available from the office no later than 15 days after the report is approved.

(f) Facilities shall not be required to maintain a full-time electronic connection to the office for the purposes of online transmission of reports as specified in subdivisions (c), (d), and (e). The office may grant exemptions to the online transmission of data requirements for limited periods to facilities. An exemption may be granted only to a facility that submits a written request and documents or demonstrates a specific need for an exemption. Exemptions shall be granted for no more than one year at a time, and for no more than a total of five consecutive years.

(g) The reports referred to in paragraph (2) of subdivision (a) of Section 128730 shall be filed with the office on the dates required by applicable law and shall be available from the office no later than six months after the date that the report was filed.

(h) The office shall make available to all interested parties a copy of any report referred to in subdivision (a), (b), (c), (d), or (g) of Section 128735, subdivision (a) of Section 128736, subdivision (a) of Section 128737, and Section 128740 and, in addition, shall make available in electronic formats reports referred to in subdivision (a), (b), (c), (d), or (g) of Section 128735, subdivision (a) of Section 128736, subdivision (a) of Section 128737, and Section 128740 unless the office determines that an individual patient's rights of confidentiality would be violated. The office shall make the reports available at cost.

SEC. 13. Section 128760 of the Health and Safety Code is amended to read:

128760. (a) On and after January 1, 1986, those systems of health facility accounting and auditing formerly approved by the California Health Facilities Commission shall remain in full force and effect for use by health facilities but shall be maintained by the office with the advice of the Health Policy and Data Advisory Commission.

(b) The office, with the advice of the commission, shall allow and provide, in accordance with appropriate regulations, for modifications in the accounting and reporting systems for use by health facilities in meeting the requirements of this chapter if the modifications are necessary to do any of the following:

(1) To correctly reflect differences in size of, provision of, or payment for, services rendered by health facilities.

(2) To correctly reflect differences in scope, type, or method of provision of, or payment for, services rendered by health facilities.

(3) To avoid unduly burdensome costs for those health facilities in meeting the requirements of differences pursuant to paragraphs (1) and (2).

(c) Modifications to discharge data reporting requirements. The office, with the advice of the commission, shall allow and provide, in accordance with appropriate regulations, for modifications to discharge data reporting format and frequency requirements if these modifications will not impair the office's ability to process the data or interfere with the purposes of this chapter. This modification

authority shall not be construed to permit the office to administratively require the reporting of discharge data items not specified pursuant to Section 128735.

(d) Modifications to emergency care data reporting requirements. The office, with the advice of the commission, shall allow and provide, in accordance with appropriate regulations, for modifications to emergency care data reporting format and frequency requirements if these modifications will not impair the office's ability to process the data or interfere with the purposes of this chapter. This modification authority shall not be construed to permit the office to require administratively the reporting of emergency care data items not specified in subdivision (a) of Section 128736.

(e) Modifications to ambulatory surgery data reporting requirements. The office, with the advice of the commission, shall allow and provide, in accordance with appropriate regulations, for modifications to ambulatory surgery data reporting format and frequency requirements if these modifications will not impair the office's ability to process the data or interfere with the purposes of this chapter. The modification authority shall not be construed to permit the office to require administratively the reporting of ambulatory surgery data items not specified in subdivision (a) of Section 128737.

(f) Reporting provisions for health facilities. The office, with the advice of the commission, shall establish specific reporting provisions for health facilities that receive a preponderance of their revenue from associated comprehensive group-practice prepayment health care service plans. These health facilities shall be authorized to utilize established accounting systems, and to report costs and revenues in a manner that is consistent with the operating principles of these plans and with generally accepted accounting principles. When these health facilities are operated as units of a coordinated group of health facilities under common management, they shall be authorized to report as a group rather than as individual institutions. As a group, they shall submit a consolidated income and expense statement.

(g) Hospitals authorized to report as a group under this subdivision may elect to file cost data reports required under the regulations of the Social Security Administration in its administration of Title XVIII of the federal Social Security Act in lieu of any comparable cost reports required under Section 128735. However, to the extent that cost data is required from other hospitals, the cost data shall be reported for each individual institution.

(h) The office, with the advice of the commission, shall adopt comparable modifications to the financial reporting requirements of this chapter for county hospital systems consistent with the purposes of this chapter.

SEC. 14. Section 128782 of the Health and Safety Code is amended to read:

128782. Notwithstanding any other provision of law, upon the request of a small and rural hospital, as defined in Section 124840, the office shall do all of the following:

(a) If the hospital did not file financial reports with the office by electronic media as of January 1, 1993, the office shall, on a case-by-case basis, do one of the following:

(1) Exempt the small and rural hospital from any electronic filing requirements of the office regarding annual or quarterly financial disclosure reports specified in Sections 128735 and 128740.

(2) Provide a one-time reduction in the fee charged to the small and rural hospital not to exceed the maximum amount assessed pursuant to Section 127280 by an amount equal to the costs incurred by the small and rural hospital to purchase the computer hardware and software necessary to comply with any electronic filing requirements of the office regarding annual or quarterly financial disclosure reports specified in Sections 128735 and 128740.

(b) The office shall provide a one-time reduction in the fee charged to the small and rural hospital not to exceed the maximum amount assessed pursuant to Section 127280 by an amount equal to the costs incurred by the small and rural hospital to purchase the computer software and hardware necessary to comply with any electronic filing requirements of the office regarding reports specified in Sections 128735, 128736, and 128737.

(c) The office shall provide the hospital with assistance in meeting the requirements specified in paragraphs (1) and (2) of subdivision (c) of Section 128755 that the reports required by subdivision (g) of Section 128735 be filed by electronic media or by online transmission. The assistance shall include the provision to the hospital by the office of a computer program or computer software to create an electronic file of patient discharge abstract data records. The program or software shall incorporate validity checks and edit standards.

(d) The office shall provide the hospital with assistance in meeting the requirements specified in subdivision (d) of Section 128755 that the reports required by subdivision (a) of Section 128736 be filed by online transmission. The assistance shall include the provision to the hospital by the office of a computer program or computer software to create an electronic file of emergency care data records. The program or software shall incorporate validity checks and edit standards.

(e) The office shall provide the hospital with assistance in meeting the requirements specified in subdivision (e) of Section 128755 that the reports required by subdivision (a) of Section 128737 be filed by online transmission. The assistance shall include the provision to the hospital by the office of a computer program or computer software to create an electronic file of ambulatory surgery data records. The

program or software shall incorporate validity checks and edit standards.

SEC. 15. Section 128812 is added to the Health and Safety Code, to read:

128812. On or before June 30, 2001, the office shall submit to the Legislature a plan to achieve the goal of data interchange between and among health facilities, health care service plans, insurers, providers, emergency medical services providers and local emergency medical services agencies, and other state agencies in California. Implementation of the plan shall begin no later than July 1, 2002. On or before June 30, 2002, the office shall submit a progress report to the Legislature, including the status of the data interchange capabilities facilitated by the office. The office, with the advice of the commission , shall engage a qualified outside consulting organization to evaluate progress made by the office and make recommendations to the Legislature by June 30, 2003.

SEC. 16. Section 128815 of the Health and Safety Code is amended to read:

128815. This chapter shall remain operative only until June 30, 2004, and as of January 1, 2005, is repealed, unless a later enacted statute, chaptered prior to that date, extends or deletes that date.

SEC. 17. The sum of one million two hundred forty thousand five hundred dollars ($1,240,500) is hereby appropriated from the California Health Planning and Data Fund, without regard to fiscal year, to the Office of Statewide Health Planning and Development for allocation as follows:

(a) The sum of two hundred fifty thousand dollars ($250,000) for the purpose of conducting a comprehensive review of hospital reporting requirements to the state.

(b) The sum of nine hundred ninety thousand five hundred dollars ($990,500) for the systems development costs associated with improving the timeliness of the patient discharge data program and the collection of ambulatory surgery and emergency department records.

CHAPTER 736

An act to amend Sections 651, 2001, 2020, 2066, 2102, 2135, 2151, 2185, 2225.5, 2428, 2460, 2462, 2472, 2475, 2496, 2569, 3501, 3504, 3505, and 3540 of, to amend and repeal Sections 3514 and 3515 of, to amend, repeal, and add Sections 2475 and 3535 of, to add Sections 473.17, 3503.5, and 3514.1 to, to repeal Sections 2101, 2148, 2473, and 2497.1 of, to repeal Article 23 (commencing with Section 2500) of Chapter 5 of Division 2 of, and to repeal and add Section 3513 of, the Business and Professions Code, relating to healing arts.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 473.17 is added to the Business and Professions Code, to read:

473.17. The Joint Legislative Sunset Review Committee shall review, in conjunction with the Legislative Analyst's Office, and in consultation with the Board of Podiatric Medicine, the department, the University of California, and the California College of Podiatric Medicine, the expenditure of funds for the support of educational and related programs in the field of podiatry. The committee shall report its findings to the Legislature by April 1, 1999.

SEC. 2. Section 651 of the Business and Professions Code is amended to read:

651. (a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to disseminate or cause to be disseminated, any form of public communication containing a false, fraudulent, misleading, or deceptive statement or claim, for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. A "public communication" as used in this section includes, but is not limited to, communication by means of television, radio, motion picture, newspaper, book, or list or directory of healing arts practitioners.

(b) A false, fraudulent, misleading, or deceptive statement or claim includes a statement or claim which does any of the following:

(1) Contains a misrepresentation of fact.

(2) Is likely to mislead or deceive because of a failure to disclose material facts.

(3) Is intended or is likely to create false or unjustified expectations of favorable results.

(4) Relates to fees, other than a standard consultation fee or a range of fees for specific types of services, without fully and specifically disclosing all variables and other material factors.

(5) Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(c) Any price advertisement shall be exact, without the use of phrases, including, but not limited to, "as low as," "and up," "lowest prices" or words or phrases of similar import. Any advertisement that refers to services, or costs for services, and that uses words of comparison shall be based on verifiable data substantiating the comparison. Any person so advertising shall be prepared to provide information sufficient to establish the accuracy of that comparison. Price advertising shall not be fraudulent, deceitful, or misleading,

including statements or advertisements of bait, discount, premiums, gifts, or any statements of a similar nature. In connection with price advertising, the price for each product or service shall be clearly identifiable. The price advertised for products shall include charges for any related professional services, including dispensing and fitting services, unless the advertisement specifically and clearly indicates otherwise.

(d) Any person so licensed shall not compensate or give anything of value to a representative of the press, radio, television, or other communication medium in anticipation of, or in return for, professional publicity unless the fact of compensation is made known in that publicity.

(e) Any person so licensed may not use any professional card, professional announcement card, office sign, letterhead, telephone directory listing, medical list, medical directory listing, or a similar professional notice or device if it includes a statement or claim that is false, fraudulent, misleading, or deceptive within the meaning of subdivision (b).

(f) Any person so licensed who violates this section is guilty of a misdemeanor. A bona fide mistake of fact shall be a defense to this subdivision but only to this subdivision.

(g) Any violation of this section by a person so licensed shall constitute good cause for revocation or suspension of his or her license or other disciplinary action.

(h) Advertising by any person so licensed may include the following:

(1) A statement of the name of the practitioner.

(2) A statement of addresses and telephone numbers of the offices maintained by the practitioner.

(3) A statement of office hours regularly maintained by the practitioner.

(4) A statement of languages, other than English, fluently spoken by the practitioner or a person in the practitioner's office.

(5) (A) A statement that the practitioner is certified by a private or public board or agency or a statement that the practitioner limits his or her practice to specific fields. For the purposes of this section, the statement of a practitioner licensed under Chapter 4 (commencing with Section 1600) who limits his or her practice to a specific field or fields, shall only include a statement that he or she is certified or is eligible for certification by a private or public board or parent association recognized by that practitioner's licensing board. A statement of certification by a practitioner licensed under Chapter 7 (commencing with Section 3000) shall only include a statement that he or she is certified or eligible for certification by a private or public board or parent association recognized by that practitioner's licensing board.

(B) A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California

may include a statement that he or she limits his or her practice to specific fields, but may only include a statement that he or she is certified or eligible for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, if that board or association is (i) an American Board of Medical Specialties member board, (ii) a board or association with equivalent requirements approved by that physician and surgeon's licensing board, or (iii) a board or association with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in that specialty or subspecialty. A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification.

For purposes of this subparagraph, a "multidisciplinary board or association" means an educational certifying body that has a psychometrically valid testing process, as determined by the Medical Board of California, for certifying medical doctors and other health care professionals that is based on the applicants' education, training, and experience.

For purposes of the term "board certified," as used in this subparagraph, the terms "board" and "association" means an organization that is an American Board of Medical Specialties member board, an organization with equivalent requirements approved by a physician and surgeon's licensing board, or an organization with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in a specialty or subspecialty.

The Medical Board of California shall adopt regulations to establish and collect a reasonable fee from each board or association applying for recognition pursuant to this subparagraph. The fee shall not exceed the cost of administering this subparagraph. Notwithstanding Section 2 of Chapter 1660 of the Statutes of 1990, this subparagraph shall become operative July 1, 1993. However, an administrative agency or accrediting organization may take any action contemplated by this subparagraph relating to the establishment or approval of specialist requirements on and after January 1, 1991.

(C) A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she is certified or eligible or qualified for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, if that board or association meets one of the following requirements: (i) is approved by the Council on Podiatric Medical Education, (ii) is a board or association with equivalent requirements approved by the California Board of Podiatric Medicine, or (iii) is a board or association with the Council on Podiatric Medical Education

approved postgraduate training programs that provide training in podiatric medicine and podiatric surgery. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification.

For purposes of this subparagraph, a "multidisciplinary board or association" means an educational certifying body that has a psychometrically valid testing process, as determined by the California Board of Podiatric Medicine, for certifying doctors of podiatric medicine that is based on the applicant's education, training, and experience. For purposes of the term "board certified," as used in this subparagraph, the terms "board" and "association" mean an organization that is a Council on Podiatric Medical Education approved board, an organization with equivalent requirements approved by the California Board of Podiatric Medicine, or an organization with a Council on Podiatric Medical Education approved postgraduate training program that provides training in podiatric medicine and podiatric surgery.

The California Board of Podiatric Medicine shall adopt regulations to establish and collect a reasonable fee from each board or association applying for recognition pursuant to this subparagraph, to be deposited in the State Treasury in the Podiatry Fund, pursuant to Section 2499. The fee shall not exceed the cost of administering this subparagraph.

(6) A statement that the practitioner provides services under a specified private or public insurance plan or health care plan.

(7) A statement of names of schools and postgraduate clinical training programs from which the practitioner has graduated, together with the degrees received.

(8) A statement of publications authored by the practitioner.

(9) A statement of teaching positions currently or formerly held by the practitioner, together with pertinent dates.

(10) A statement of his or her affiliations with hospitals or clinics.

(11) A statement of the charges or fees for services or commodities offered by the practitioner.

(12) A statement that the practitioner regularly accepts installment payments of fees.

(13) Otherwise lawful images of a practitioner, his or her physical facilities, or of a commodity to be advertised.

(14) A statement of the manufacturer, designer, style, make, trade name, brand name, color, size, or type of commodities advertised.

(15) An advertisement of a registered dispensing optician may include statements in addition to those specified in paragraphs (1) to (14), inclusive, provided that any statement shall not violate subdivision (a), (b), (c), or (e) of this section or any other section of this code.

(16) A statement, or statements, providing public health information encouraging preventative or corrective care.

(17) Any other item of factual information that is not false, fraudulent, misleading, or likely to deceive.

(i) Each of the healing arts boards and examining committees within Division 2 shall adopt appropriate regulations to enforce 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.

Each of the healing arts boards and committees and examining committees within Division 2 shall, by regulation, define those efficacious services to be advertised by business or professions under their jurisdiction for the purpose of determining whether advertisements are false or misleading. Until a definition for that service has been issued, no advertisement for that service shall be disseminated. However, if a definition of a service has not been issued by a board or committee within 120 days of receipt of a request from a licensee, all those holding the license may advertise the service. Those boards and committees shall adopt or modify regulations defining what services may be advertised, the manner in which defined services may be advertised, and restricting advertising that would promote the inappropriate or excessive use of health services or commodities. A board or committee shall not, by regulation, unreasonably prevent truthful, nondeceptive price or otherwise lawful forms of advertising of services or commodities, by either outright prohibition or imposition of onerous disclosure requirements. However, any member of a board or committee acting in good faith in the adoption or enforcement of any regulation shall be deemed to be acting as an agent of the state.

(j) The Attorney General shall commence legal proceedings in the appropriate forum to enjoin advertisements disseminated or about to be disseminated in violation of this section and seek other appropriate relief to enforce this section. Notwithstanding any other provision of law, the costs of enforcing this section to the respective licensing boards or committees may be awarded against any licensee found to be in violation of any provision of this section. This shall not diminish the power of district attorneys, county counsels, or city attorneys pursuant to existing law to seek appropriate relief.

SEC. 3. Section 2001 of the Business and Professions Code is amended to read:

2001. There is in the Department of Consumer Affairs a Medical Board of California which consists of 19 members, seven of whom shall be public members.

The Governor shall appoint 17 members to the board, subject to confirmation by the Senate, five of whom shall be public members. 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.

This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 4. Section 2020 of the Business and Professions Code is amended to read:

2020. The board may employ an executive director exempt from the provisions of the Civil Service Act and may also employ investigators, legal counsel, medical consultants, and other assistance as it may deem necessary to carry into effect this chapter. The board may fix the compensation to be paid for services subject to the provisions of applicable state laws and regulations and may incur other expenses as it may deem necessary. Investigators employed by the board shall be provided special training in investigating medical practice activities.

The Attorney General shall act as legal counsel for the board for any judicial and administrative proceedings and his or her services shall be a charge against it.

This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 5. Section 2066 of the Business and Professions Code is amended to read:

2066. (a) Nothing in this chapter shall be construed to prohibit a foreign medical graduate from engaging in the practice of medicine whenever and wherever required as a part of a clinical service program under the following conditions:

(1) The clinical service is in a postgraduate training program approved by the Division of Licensing.

(2) The graduate is registered with the division for the clinical service.

(b) A graduate may engage in the practice of medicine under this section until the receipt of his or her physician and surgeon's certificate. If the graduate fails to pass the examination and receive a certificate by the completion of the graduate's second year of postgraduate training, all privileges and exemptions under this section shall automatically cease.

(c) Nothing in this section shall preclude a foreign medical graduate from engaging in the practice of medicine under any other exemption contained in this chapter.

SEC. 6. Section 2101 of the Business and Professions Code is repealed.

SEC. 7. Section 2102 of the Business and Professions Code is amended to read:

2102. Any applicant who either (1) is a United States citizen, or (2) has filed a declaration of intention to become a United States citizen, a petition for naturalization, or a comparable document, or (3) was admitted or licensed to practice medicine and surgery in a country or other state of the United States wherein licensure requirements are satisfactory to the Division of Licensing, whose professional instruction was acquired in a country other than the United States or Canada shall provide evidence satisfactory to the division of compliance with the following requirements to be issued a physician and surgeon's certificate:

(a) Completion in a medical school or schools of a resident course of professional instruction equivalent to that required by Section 2089 and issuance to the applicant of a document acceptable to the division which shows final and successful completion of the course. However, nothing in this section shall be construed to require the division to evaluate for equivalency any coursework obtained at a medical school disapproved by the division pursuant to this section.

(b) Certification by the Educational Commission for Foreign Medical Graduates, or its equivalent, as determined by the division. This subdivision shall apply to all applicants who are subject to this section and who have not taken and passed the written examination specified in subdivision (d) prior to June 1, 1986.

(c) Satisfactory completion of the postgraduate training required under Section 2096. An applicant shall be required to have substantially completed the professional instruction required in subdivision (a) and shall be required to make application to the division and have passed steps 1 and 2 of the written examination relating to biomedical and clinical sciences prior to commencing any postgraduate training in this state. In its discretion, the division may authorize an applicant who is deficient in any education or clinical instruction required by Sections 2089 and 2089.5 to make up any deficiencies as a part of his or her postgraduate training program, but that remedial training shall be in addition to the postgraduate training required for licensure.

(d) Pass the written examination as provided under Article 9 (commencing with Section 2170). If an applicant has not satisfactorily completed at least two years of approved postgraduate training, the applicant shall also pass the clinical competency written examination. An applicant shall be required to meet the requirements specified in subdivision (b) prior to being admitted to the written examination required by this subdivision.

Nothing in this section prohibits the division from disapproving any foreign medical school or from denying an application if, in the opinion of the division, the professional instruction provided by the medical school or the instruction received by the applicant is not equivalent to that required in Article 4 (commencing with Section 2080).

SEC. 8. 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. However, nothing in this section shall be construed to require the division to evaluate for equivalency any coursework obtained at a medical school disapproved by the division pursuant to Article 4 (commencing with Section 2080).

(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 that the division determines constitutes evidence of a pattern of negligence or incompetence.

(d) The applicant (1) is certified by a specialty board approved by the American Board of Medical Specialties or approved by the division pursuant to subdivision (h) of Section 651; (2) has satisfactorily completed at least two years of approved postgraduate training; or (3) takes and passes the clinical competency written examination.

(e) 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).

(f) 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 that may be reviewed and processed pursuant to Section 2151.

SEC. 9. Section 2148 of the Business and Professions Code is repealed.

SEC. 10. Section 2151 of the Business and Professions Code is amended to read:

2151. Notwithstanding any other provision of law, the Division of Licensing may issue a physician and surgeon's certificate to a diplomate of the National Board of Medical Examiners provided the following requirements are met:

(a) The standard of the National Board of Medical Examiners on the date the diplomate certificate was issued was in no degree or particular less than that which was required for a physician and surgeon's certificate under this chapter on the same date.

(b) The applicant shall file an application with the division as provided in Article 4 (commencing with Section 2080). The applicant shall not, however, be required to comply with any provision of that article which is inconsistent with or in conflict with the provisions of this section.

(c) The application shall be accompanied by the fee required in Section 2435.

(d) The applicant shall satisfy the division that the diplomate certificate was procured without fraud or misrepresentation.

(e) The applicant shall not have committed any acts or crimes constituting grounds for denial of a certificate under Section 480 or Article 12 (commencing with Section 2220).

SEC. 11. Section 2185 of the Business and Professions Code is amended to read:

2185. Notwithstanding Section 135, an applicant for examination who fails to pass any part or parts of the written examination after two attempts shall not be eligible to be reexamined 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. 12. Section 2225.5 of the Business and Professions Code is amended to read:

2225.5. (a) (1) A licensee who fails or refuses to comply with a request for the medical records of a patient, that is accompanied by that patient's written authorization for release of records to the board, within 15 days of receiving the request and authorization, shall pay to the board a civil penalty of one thousand dollars ($1,000) per

day for each day that the documents have not been produced after the 15th day, unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the medical records of a patient that is accompanied by that patient's written authorization for release of records to the board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's medical records to the board within 30 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 30th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the medical records.

(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board shall pay to the board a civil penalty of one thousand dollars ($1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to ten thousand dollars ($10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during

the period the health care facility is out of compliance with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000) and reported to the State Department of Health Services and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board constitutes unprofessional conduct and is ground for suspension or revocation of his or her license.

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code).

(f) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

SEC. 14. Section 2428 of the Business and Professions Code is amended to read:

2428. (a) A person who fails to renew his or her license within five years after its expiration may not renew it, and it may not be reissued, reinstated, or restored thereafter, but that person may apply for and obtain a new license if he or she:

(1) Has not committed any acts or crimes constituting grounds for denial of licensure under Division 1.5 (commencing with Section 475).

(2) Takes and passes the examination, if any, which would be required of him or her if application for licensure was being made for the first time, or otherwise establishes to the satisfaction of the licensing authority that passes on the qualifications of applicants for the license that, with due regard for the public interest, he or she is qualified to practice the profession or activity for which the applicant was originally licensed.

(3) Pays all of the fees that would be required if application for licensure was being made for the first time.

The licensing authority may provide for the waiver or refund of all or any part of an examination fee in those cases in which a license is issued without an examination pursuant to this section.

Nothing in this section shall be construed to authorize the issuance of a license for a professional activity or system or mode of healing for which licenses are no longer required.

(b) In addition to the requirements set forth in subdivision (a), an applicant shall establish that he or she meets one of the following requirements: (1) satisfactory completion of at least two years of approved postgraduate training; (2) certification by a specialty board approved by the American Board of Medical Specialties or approved by the Division of Licensing pursuant to subdivision (h) of Section 651; or (3) passing of the clinical competency written examination.

(c) Subdivision (a) shall apply to persons who held licenses to practice podiatric medicine except that those persons who failed to renew their licenses within three years after its expiration may not renew it, and it may not be reissued, reinstated, or restored, except in accordance with subdivision (a).

SEC. 15. Section 2460 of the Business and Professions Code is amended to read:

2460. There is created within the jurisdiction of the Medical Board of California and its divisions the California Board of Podiatric Medicine.

This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the California Board of Podiatric Medicine subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 16. Section 2462 of the Business and Professions Code is amended to read:

2462. The board shall consist of seven members, three of whom shall be public members. Not more than one member of the board shall be a full-time faculty member of a college or school of podiatric medicine. The Governor shall give consideration to recommendations of the board after the division has consulted with the board, except with regard to the public members.

The Governor shall appoint the four members qualified as provided in Section 2463 and one public member. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member.

SEC. 17. Section 2472 of the Business and Professions Code is amended to read:

2472. (a) The certificate to practice podiatric medicine authorizes the holder to practice podiatric medicine.

(b) As used in this chapter, "podiatric medicine" means the diagnosis, medical, surgical, mechanical, manipulative, and electrical treatment of the human foot, including the ankle and tendons that insert into the foot and the nonsurgical treatment of the muscles and tendons of the leg governing the functions of the foot.

(c) No podiatrist shall do any amputation or administer an anesthetic other than local. If an anesthetic other than local is required for any procedure, the anesthetic shall be administered by another health care practitioner licensed under this division, who is authorized to administer the required anesthetic within the scope of his or her practice.

(d) Surgical treatment of the ankle and tendons at the level of the ankle may be performed by a doctor of podiatric medicine who was certified by the board on and after January 1, 1984.

(e) Surgical treatment by a podiatrist of the ankle and tendons at the level of the ankle shall be performed only in the following locations:

(1) A licensed general acute care hospital, as defined in Section 1250 of the Health and Safety Code.

(2) A licensed surgical clinic, as defined in Section 1204 of the Health and Safety Code, if the podiatrist has surgical privileges, including the privilege to perform surgery on the ankle, in a general acute care hospital described in subparagraph (1) and meets all the protocols of the surgical clinic.

(3) An ambulatory surgical center that is certified to participate in the Medicare program under Title XVIII (42 U.S.C. Sec. 1395 et seq.) of the federal Social Security Act, if the podiatrist has surgical privileges, including the privilege to perform surgery on the ankle, in a general acute care hospital described in subparagraph (1) and meets all the protocols of the surgical center.

(4) A freestanding physical plant housing outpatient services of a licensed general acute care hospital, as defined in Section 1250 of the Health and Safety Code, if the podiatrist has surgical privileges, including the privilege to perform surgery on the ankle, in a general acute care hospital described in paragraph (1). For purposes of this section, a "freestanding physical plant" means any building that is not physically attached to a building where inpatient services are provided.

(f) The amendment of this section made at the 1983–84 Regular Session of the Legislature is intended to codify existing practice.

SEC. 18. Section 2473 of the Business and Professions Code is repealed.

SEC. 19. Section 2475 of the Business and Professions Code is amended to read:

2475. (a) Unless otherwise provided by law, no postgraduate trainee, intern, resident postdoctoral fellow, or instructor may engage in the practice of podiatric medicine, or receive compensation therefor, or offer to engage in the practice of podiatric

medicine unless he or she holds a valid, unrevoked, and unsuspended certificate to practice podiatric medicine issued by the division. However, a graduate of an approved college or school of podiatric medicine upon whom the degree doctor of podiatric medicine, doctor of podiatry, or doctor of surgical chiropody has been conferred, who is issued a limited license, which may be renewed annually for up to four years, for this purpose by the division upon recommendation of the board, and who is enrolled in a postgraduate training program approved by the board, may engage in the practice of podiatric medicine whenever and wherever required as a part of that program under the following conditions:

(1) A graduate with a limited license in an approved internship, residency, or fellowship program may participate in training rotations outside the scope of podiatric medicine, under the supervision of a physician and surgeon who holds a medical doctor or doctor of osteopathy degree wherever and whenever required as a part of the training program, and may receive compensation for that practice. If the graduate fails to receive a license to practice podiatric medicine under this chapter within two years from the commencement of the postgraduate training, all privileges and exemptions under this section shall automatically cease.

(2) Podiatric hospitals functioning as a part of the teaching program of an approved college or school of podiatric medicine in this state may exchange instructors or resident or assistant resident podiatrists with another approved college or school of podiatric medicine not located in this state, or those hospitals may appoint a graduate of an approved school as such a resident for purposes of postgraduate training. Those instructors and residents may practice and be compensated as provided in paragraph (1), but that practice and compensation shall be for a period not to exceed one year.

(b) 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.

SEC. 20. Section 2475 is added to the Business and Professions Code, to read:

2475. (a) Unless otherwise provided by law, no postgraduate trainee, intern, resident postdoctoral fellow, or instructor may engage in the practice of podiatric medicine, or receive compensation therefor, or offer to engage in the practice of podiatric medicine unless he or she holds a valid, unrevoked, and unsuspended certificate to practice podiatric medicine issued by the division. However, a graduate of an approved college or school of podiatric medicine upon whom the degree doctor of podiatric medicine, doctor of podiatry, or doctor of surgical chiropody has been conferred, who is enrolled in a postgraduate training program approved by the board, may engage in the practice of podiatric

medicine whenever and wherever required as a part of that program under the following conditions:

(1) A graduate in an approved internship, residency, or fellowship program may participate in training rotations outside the scope of podiatric medicine, under the supervision of a physician and surgeon who holds a medical doctor or doctor of osteopathy degree wherever and whenever required as a part of the training program, and may receive compensation for that practice. If the graduate fails to receive a license to practice podiatric medicine under this chapter within two years from the commencement of the postgraduate training, all privileges and exemptions under this section shall automatically cease.

(2) Podiatric hospitals functioning as a part of the teaching program of an approved college or school of podiatric medicine in this state may exchange instructors or resident or assistant resident podiatrists with another approved college or school of podiatric medicine not located in this state, or those hospitals may appoint a graduate of an approved school as such a resident for purposes of postgraduate training. Those instructors and residents may practice and be compensated as provided in paragraph (1), but that practice and compensation shall be for a period not to exceed one year.

(b) This section shall become operative on July 1, 2000.

SEC. 21. Section 2496 of the Business and Professions Code is amended to read:

2496. In order to insure the continuing competence of persons licensed to practice podiatric medicine, the board shall adopt and administer 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) requiring continuing education of those licensees. The board shall require those licensees to demonstrate satisfaction of the continuing education requirements and one of the following requirements at each license renewal:

(a) Passage of an examination administered by the board within the past 10 years.

(b) Passage of an examination administered by an approved specialty certifying board within the past 10 years.

(c) Current diplomate, board-eligible, or board-qualified status granted by an approved specialty certifying board within the past 10 years.

(d) Recertification of current status by an approved specialty certifying board within the past 10 years.

(e) Successful completion of an approved residency or fellowship program within the past 10 years.

(f) Granting or renewal of current staff privileges within the past five years by a health care facility that is licensed, certified, accredited, conducted, maintained, operated, or otherwise approved

by an agency of the federal or state government or an organization approved by the Medical Board of California.

(g) Successful completion of an approved course of study of at least four weeks' duration at an approved school within the past five years.

SEC. 22. Section 2497.1 of the Business and Professions Code is repealed.

SEC. 23. Article 23 (commencing with Section 2500) of Chapter 5 of Division 2 of the Business and Professions Code is repealed.

SEC. 24. Section 2569 of the Business and Professions Code is amended to read:

2569. The powers and duties of the board, as set forth in this chapter, shall be subject to the review required by Division 1.2 (commencing with Section 473). The review shall be performed as if this chapter were scheduled to become inoperative on July 1, 2003, and would be repealed as of January 1, 2004, as described in Section 473.1.

SEC. 25. Section 3501 of the Business and Professions Code is amended to read:

3501. As used in this chapter:

(a) "Board" means the Division of Licensing of the Medical Board of California.

(b) "Approved program" means a program for the education of physician assistants which has been formally approved by the committee.

(c) "Trainee" means a person who is currently enrolled in an approved program.

(d) "Physician assistant" means a person who meets the requirements of this chapter and is licensed by the committee.

(e) "Supervising physician" means a physician and surgeon licensed by the board or by the Osteopathic Medical Board of California who supervises one or more physician assistants, who possesses a current valid license to practice medicine, and who is not currently on disciplinary probation for improper use of a physician assistant.

(f) "Supervision" means that a licensed physician and surgeon oversees the activities of, and accepts responsibility for, the medical services rendered by a physician assistant.

(g) "Committee" or "examining committee" means the Physician Assistant Committee.

(h) "Regulations" means the rules and regulations as contained in Chapter 13.8 (commencing with Section 1399.500) of Title 16 of the California Code of Regulations.

(i) "Routine visual screening" means uninvasive nonpharmacological simple testing for visual acuity, visual field defects, color blindness, and depth perception.

SEC. 26. Section 3503.5 is added to the Business and Professions Code, to read:

3503.5. (a) A person licensed under this chapter who in good faith renders emergency care at the scene of an emergency that occurs outside both the place and course of that person's employment shall not be liable for any civil damage as a result of any acts or omissions by that person in rendering the emergency care.

(b) This section shall not be construed to grant immunity from civil damages to any person whose conduct in rendering emergency care is grossly negligent.

(c) In addition to the immunity specified in subdivision (a), the provisions of Article 17 (commencing with Section 2395) of Chapter 5 shall apply to a person licensed under this chapter when acting pursuant to delegated authority from an approved supervising physician.

SEC. 27. Section 3504 of the Business and Professions Code is amended to read:

3504. There is established a Physician Assistant Committee of the Medical Board of California. The committee consists of nine members.

This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2004, 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. 28. Section 3505 of the Business and Professions Code is amended to read:

3505. The members of the committee shall include one member of the Medical Board of California, a physician representative of a California medical school, an educator participating in an approved program for the training of physician assistants, a physician who is an approved supervising physician of a physician assistant and who is not a member of any division of the Medical Board of California, three physician assistants, and two public members. Upon the first expiration of the term of the member who is a member of the Medical Board of California, that position shall be filled by a member of the Medical Board of California who is a physician member. Upon the first expiration of the term of the member who is a physician representative of a California medical school, that position shall be filled by a public member. Upon the first expiration of the term of the member who is an educator participating in an approved program for the training of physician assistants, that position shall be filled by a physician assistant. Upon the first expiration of the term of the member who is an approved supervising physician of a physician assistant and not a member of any division of the Medical Board of California, that position shall be filled by a public member. Following the expiration of the terms of the members described above, the committee shall include four physician assistants, one physician who

is also a member of the Medical Board of California, and four public members.

Each member of the committee shall hold office for a term of four years expiring on January 1st, and shall serve until the appointment and qualification of a successor or until one year shall have elapsed since the expiration of the term for which the member was appointed, whichever first occurs. No member shall serve for more than two consecutive terms. Vacancies shall be filled by appointment for the unexpired terms.

The Governor shall appoint the licensed members qualified as provided in this section and two public members. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member.

SEC. 29. Section 3513 of the Business and Professions Code is repealed.

SEC. 30. Section 3513 is added to the Business and Professions Code, to read:

3513. The committee shall recognize the approval of training programs for physician assistants approved by a national accrediting organization. Physician assistant training programs accredited by a national accrediting agency approved by the committee shall be deemed approved by the committee under this section. If no national accrediting organization is approved by the committee, the committee may examine and pass upon the qualification of, and may issue certificates of approval for, programs for the education and training of physician assistants that meet committee standards.

SEC. 31. Section 3514 of the Business and Professions Code is amended to read:

3514. (a) The board shall formulate by regulation guidelines for the approval of licensed physicians to supervise a physician's assistant. Each physician desiring to supervise a physician's assistant shall file a separate application, except as provided in Section 3516.5.

(b) The committee shall formulate by regulation guidelines for the consideration of applications for licensure as a physician's assistant.

(c) The committee shall formulate by regulation guidelines for the approval of physician's assistant training programs.

(d) This section shall become inoperative on July 1, 2001, and, as of January 1, 2002, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2002, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 32. Section 3514.1 is added to the Business and Professions Code, to read:

3514.1. (a) The committee shall formulate by regulation guidelines for the consideration of applications for licensure as a physician's assistant.

(b) The committee shall formulate by regulation guidelines for the approval of physician's assistant training programs.

(c) This section shall become operative on July 1, 2001.

SEC. 33. Section 3515 of the Business and Professions Code is amended to read:

3515. (a) The board shall approve an application by a licensed physician to supervise a physician's assistant, where the applicant has met all of the requirements of this chapter and the board's regulations.

(b) 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. 34. Section 3535 of the Business and Professions Code is amended to read:

3535. Notwithstanding any other provision of law, physicians and surgeons licensed by the Osteopathic Medical Board of California may employ physician's assistants provided:

(a) Each physician's assistant so employed is a graduate of an approved program and is licensed by the committee.

(b) The scope of practice of the physician's assistant shall be the same as that which is approved by the Division of Licensing of the Medical Board of California for physicians and surgeons supervising physician's assistants in the same or a similar specialty.

(c) The supervising physician and surgeon is approved by the Osteopathic Medical Board of California. The Osteopathic Medical Board of California may deny an application, or suspend or revoke or impose probationary conditions upon any osteopathic physician and surgeon approved to supervise any physician's assistant in any decision made after a hearing as provided in Section 3528.

(d) Any physician's assistant licensed by the committee shall be eligible for employment by any physician and surgeon approved by the Osteopathic Medical Board of California; except that no physician and surgeon shall supervise more than two physician's assistants. The Osteopathic Medical Board of California may restrict physicians and surgeons to supervising specific types of physician's assistants including, but not limited to, restricting physicians and surgeons from supervising physician's assistants outside of the physician's and surgeon's field of specialty.

(e) Each physician and surgeon desiring to supervise a physician's assistant under this section shall file a separate application. The fees to be paid to the Osteopathic Medical Board of California for approval to supervise a physician's assistant are to be set as follows: An application fee not to exceed fifty dollars ($50) shall be charged to each physician and surgeon applicant. An approval fee not to exceed one hundred dollars ($100) shall be charged to each physician and surgeon upon approval of an application to supervise a physician's assistant. If the approval will expire less than one year after its issuance, the fee shall be 50 percent of the initial approval fee currently in effect. The Osteopathic Medical Board of California shall

renew approval to supervise physician's assistants upon application for that renewal. A biennial renewal fee not to exceed one hundred fifty dollars ($150) shall be paid for the renewal of that approval. The delinquency fee is twenty-five dollars ($25). The duplicate license fee is ten dollars ($10). The fees collected by the Osteopathic Medical Board of California pursuant to this subdivision shall be deposited in the Osteopathic Medical Board of California Contingent Fund.

(f) Any person who violates subdivision (a), (b), (c), or (d) of this section shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000) or by both that imprisonment and fine.

(g) 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. 35. Section 3535 is added to the Business and Professions Code, to read:

3535. (a) Notwithstanding any other provision of law, physicians and surgeons licensed by the Osteopathic Medical Board of California may use or employ physician assistants provided (1) each physician assistant so used or employed is a graduate of an approved program and is licensed by the committee, and (2) the scope of practice of the physician assistant is the same as that which is approved by the Division of Licensing of the Medical Board of California for physicians and surgeons supervising physician assistants in the same or similar specialty.

(b) Any person who violates subdivision (a) shall be guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(c) This section shall become operative on July 1, 2001.

SEC. 36. Section 3540 of the Business and Professions Code is amended to read:

3540. A physician assistants 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 certified physician assistants are in compliance with the Moscone-Knox Professional Corporation Act, the provisions of 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 physician assistants corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code) is the committee.

SEC. 37. 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 737

An act to amend Section 25205.5 of, and to add Section 25205.9 to, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 25205.5 of the Health and Safety Code is amended to read:

25205.5. (a) In addition to the fee imposed pursuant to Section 25174.1, every generator of hazardous waste, in the amounts specified in subdivision (c), shall pay the board a generator fee for each generator site for each calendar year, or portion thereof, unless the generator has paid a facility fee or received a credit, as specified in Section 25205.2, for each specific site, for the calendar year for which the generator fee is due.

(b) The base fee rate for the fee imposed pursuant to subdivision (a) is two thousand seven hundred forty-eight dollars ($2,748).

(c) (1) Each generator who generates an amount equal to, or more than, five tons, but less than 25 tons, of hazardous waste during the prior calendar year shall pay 5 percent of the base rate.

(2) Each generator who generates an amount equal to, or more than, 25 tons, but less than 50 tons, of hazardous waste during the prior calendar year shall pay 40 percent of the base rate.

(3) Each generator who generates an amount equal to, or more than, 50 tons, but less than 250 tons, of hazardous waste during the prior calendar year shall pay the base rate.

(4) Each generator who generates an amount equal to, or more than, 250 tons, but less than 500 tons, of hazardous waste during the prior calendar year shall pay five times the base rate.

(5) Each generator who generates an amount equal to, or more than, 500 tons, but less than 1,000 tons, of hazardous waste during the prior calendar year shall pay 10 times the base rate.

(6) Each generator who generates an amount equal to, or more than, 1,000 tons, but less than 2,000 tons, of hazardous waste during the prior calendar year shall pay 15 times the base rate.

(7) Each generator who generates an amount equal to, or more than, 2,000 tons of hazardous waste during the prior calendar year shall pay 20 times the base rate.

(d) The base rate established pursuant to subdivision (b) was the base rate for the 1997 calendar year and the board shall adjust the base rate annually to reflect increases or decreases in the cost of living, during the prior fiscal year, as measured by the Consumer Price Index issued by the Department of Industrial Relations or by a successor agency.

(e) The establishment of the annual operating fee pursuant to this section is exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(f) The following materials are not hazardous wastes for purposes of this section:

(1) Hazardous materials which are recycled, and used onsite, and are not transferred offsite.

(2) Aqueous waste treated in a treatment unit operating, or which subsequently operates, pursuant to a permit-by-rule, or pursuant to Section 25200.3 or 25201.5. However, hazardous waste generated by a treatment unit treating waste pursuant to a permit-by-rule, by a unit which subsequently obtains a permit-by-rule, or other authorization pursuant to Section 25200.3 or 25201.5 is hazardous waste for purposes of this section.

(g) The fee imposed pursuant to this section shall be paid in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code.

(h) (1) A generator who pays a hazardous waste generator inspection fee to a certified unified program agency, which is imposed as part of a single fee system and fee accountability program that are both in compliance with the requirements of Section 25404.5, shall be eligible for a refund of all, or part of, the generator fee paid pursuant to subdivision (a) if both of the following conditions apply:

(A) The generator received a credit pursuant to Section 43152.7 or 43152.11 of the Revenue and Taxation Code for fees paid for hazardous waste generated in 1996.

(B) The department certifies, pursuant to subdivision (b) of Section 25205.9, that funds are available to pay all or part of the refund.

(2) A generator who is eligible for a refund pursuant to paragraph (1) shall submit an application for that refund to the board by March 31 of the fiscal year during which the generator paid the generator fee pursuant to subdivision (a). An application for a refund postmarked after March 31 is void, shall not be processed by the board, and shall be returned to the applicant.

(i) (1) A generator who transfers hazardous materials to an offsite facility for recycling at that offsite facility or another offsite facility shall be eligible for a refund of all, or part of, the generator fee paid pursuant to subdivision (a) if all of the following conditions apply:

(A) The offsite facility to which the hazardous materials are manifested pays a facility fee pursuant to Section 25205.2.

(B) The amount of hazardous materials transferred to the offsite facility and recycled there, when deducted from the total tonnage of hazardous waste generated at the generator's site, results in the generator becoming eligible for a generator fee that is lower than the fee paid pursuant to subdivision (a).

(C) The hazardous materials transferred to the offsite facility are not burned in a boiler, industrial furnace, or an incinerator, as those terms are defined in Section 260.10 of Title 40 of the Code of Federal Regulations, used in a manner constituting disposal, or used to produce products that are applied to land.

(D) The department certifies, pursuant to subdivision (b) of Section 25205.9, that funds are available to pay all or part of the refund.

(2) A generator who is eligible for a refund pursuant to paragraph (1) shall submit an application for that refund to the board by March 31 of the fiscal year during which the generator paid the generator fee pursuant to subdivision (a). An application for a refund postmarked after March 31 is void, shall not be processed by the board, and shall be returned to the applicant.

(j) (1) The amendment of this section made by Chapter 1125 of the Statutes of 1991 does not constitute a change in, but is declaratory of, existing law.

(2) The amendment of subdivision (a) of this section made by Chapter 259 of the Statutes of 1996 does not constitute a change in, but is declaratory of, existing law.

SEC. 2. Section 25205.9 is added to the Health and Safety Code, to read:

25205.9. (a) On or before June 30 of each year, the department shall determine if there are surplus funds in the Hazardous Waste Control Account and shall, upon appropriation by the Legislature, allocate these surplus funds to pay refunds in the following order of priority:

(1) To pay refunds to generators pursuant to subdivision (c).

(2) To pay refunds to generators pursuant to subdivision (d). However, the department shall not pay refunds pursuant to subdivision (d) until all applications for refunds pursuant to subdivision (c) have first been paid.

(b) The department shall certify the amount of the surplus in the Hazardous Waste Control Account to the board and shall direct the board to pay refunds to generators pursuant to subdivisions (c) and (d) to the extent funds permit. If funds are not sufficient to pay all the refunds for which the board receives applications pursuant to

subdivision (h) of Section 25205.5, the department shall direct the board to pay refunds pursuant to subdivision (c) on a pro rata basis. If funds are sufficient to pay all refunds for which applications are received pursuant to subdivision (h) of Section 25205.5 but not sufficient to pay all refunds for which applications were received by the board pursuant to subdivision (i) of Section 25205.5, the department shall direct the board to pay refunds pursuant to subdivision (d) on a pro rata basis.

(c) (1) If the department certifies that there are sufficient funds to do so, the board shall issue refunds, in the manner directed by the department pursuant to subdivision (b), to hazardous waste generators who are eligible for refunds pursuant to paragraph (1) of subdivision (h) of Section 25205.5.

(2) The refund made to a generator pursuant to this subdivision shall not exceed the fee paid by the generator pursuant to Section 25205.5, or exceed the hazardous waste generator inspection fee paid to the certified unified program agency in the previous calendar year, whichever is less.

(3) The board may issue refunds pursuant to this section only if the department certifies, pursuant to subdivision (b), that funds for these refunds are available.

(d) (1) If the department certifies that there are sufficient funds to do so, the board shall issue refunds, in the manner directed by the department pursuant to subdivision (b), to hazardous waste generators who are eligible for refunds pursuant to paragraph (1) of subdivision (i) of Section 25205.5.

(2) The refund made to a generator pursuant to this subdivision shall be equal to the difference between the amount of the generator fee paid by the generator pursuant to Section 25205.5 and the amount the generator would have paid if the amount of hazardous materials transferred to an offsite facility for recycling had been deducted from the total tonnage of hazardous waste generated at the generator's site. However, if a generator receives a refund pursuant to subdivision (c), the generator may not receive a refund pursuant to this subdivision that exceeds the difference between the amount of the generator fee paid pursuant to Section 25205.5 and the amount of the refund received pursuant to subdivision (c).

(3) The board may issue refunds pursuant to this subdivision only if the department certifies, pursuant to subdivision (b), that funds for these refunds are available.

(e) For purposes of this section, "surplus" means the amount in the Hazardous Waste Control Account on June 30 of each year that is in excess of the reserve required by subdivision (k) of Section 25174.

CHAPTER 738

An act to amend Sections 5330 and 5610 of the Welfare and Institutions Code, relating to mental health, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 5330 of the Welfare and Institutions Code is amended to read:

5330. (a) Any person may bring an action against an individual who has willfully and knowingly released confidential information or records concerning him or her in violation of this chapter, or of Chapter 1 (commencing with Section 11860) of Part 3 of Division 10.5 of the Health and Safety Code, for the greater of the following amounts:

(1) Ten thousand dollars ($10,000).

(2) Three times the amount of actual damages, if any, sustained by the plaintiff.

(b) Any person may bring an action against an individual who has negligently released confidential information or records concerning him or her in violation of this chapter, or of Chapter 1 (commencing with Section 11860) of Part 3 of Division 10.5 of the Health and Safety Code, for both of the following:

(1) One thousand dollars ($1,000). In order to recover under this paragraph, it shall not be a prerequisite that the plaintiff suffer or be threatened with actual damages.

(2) The amount of actual damages, if any, sustained by the plaintiff.

(c) Any person may, in accordance with Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, bring an action to enjoin the release of confidential information or records in violation of this chapter, and may in the same action seek damages as provided in this section.

(d) In addition to the amounts specified in subdivisions (a) and (b), the plaintiff shall recover court costs and reasonable attorney's fees as determined by the court.

SEC. 2. Section 5610 of the Welfare and Institutions Code is amended to read:

5610. (a) Each county mental health system shall comply with reporting requirements developed by the State Department of Mental Health which shall be uniform and simplified. The department shall review existing data requirements to eliminate unnecessary requirements and consolidate requirements which are

necessary. These requirements shall provide comparability between counties in reports.

(b) The department shall develop, in consultation with the Performance Outcome Committee pursuant to Section 5611, and with the Health and Welfare Agency, uniform definitions and formats for a statewide, nonduplicative client-based information system that includes all information necessary to meet federal mental health grant requirements and state and federal medicaid reporting requirements, as well as any other state requirements established by law. The data system, including performance outcome measures reported pursuant to Section 5613, shall be developed by July 1, 1992.

(c) Unless determined necessary by the department to comply with federal law and regulations, the data system developed pursuant to subdivision (b) shall not be more costly than that in place during the 1990–91 fiscal year.

(d) (1) The department shall develop unique client identifiers that permit development of client-specific cost and outcome measures and related research and analysis.

(2) The department's collection and use of client information, and the development and use of client identifiers, shall be consistent with clients' constitutional and statutory rights to privacy and confidentiality.

(3) Data reported to the department may include name and other personal identifiers. That information is confidential and subject to Section 5328 and any other state and federal laws regarding confidential client information.

(4) Personal client identifiers reported to the department shall be protected to ensure confidentiality during transmission and storage through encryption and other appropriate means.

(5) Information reported to the department may be shared with local public mental health agencies submitting records for the same person and that information is subject to Section 5328.

(e) All client information reported to the department pursuant to Chapter 2 (commencing with Section 4030) of Part 1 of Division 4 and Sections 5328 to 5780, inclusive, and any other state and federal laws regarding reporting requirements, consistent with Section 5328, shall not be used for purposes other than those purposes expressly stated in the reporting requirements referred to in this subdivision.

(f) The department may adopt emergency regulations to implement this section in accordance with the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of emergency regulations to implement this section that are filed with the Office of Administrative Law within one year of the date on which the act that added this subdivision 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. 3. 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. 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 timely implement the provisions of this act with regard to the new data collection system that is to be in place by July 1, 1998, and also to avoid dual data collection systems and unnecessary costs, it is necessary that this act take effect immediately.

CHAPTER 739

An act to amend Sections 10009.6, 12811.1, and 12822.6 of, and to repeal Sections 10016 and 12811.5 of, the Public Utilities Code, relating to public utilities.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

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

SECTION 1. Section 10009.6 of the Public Utilities Code is amended to read:

10009.6. (a) The decision of a public utility to require a new residential applicant to deposit a sum of money with the public utility prior to establishing an account and furnishing service shall be based solely upon the creditworthiness of the applicant as determined by the public utility.

(b) No municipal corporation owning or operating a public utility furnishing services for residential use to a tenant under an account established by the tenant shall seek to recover any charges or penalties for the furnishing of services to, or for the tenant's residential use from, any subsequent tenant or the property owner due to nonpayment of charges by a previous tenant. For this purpose, the term "subsequent tenant" shall not include any adult person who lived at the residence during the period that the charges or penalties accrued. The municipal corporation may collect a deposit from the tenant service applicant prior to establishing an account for the tenant. The municipal corporation may not require that service to

subsequent tenants be furnished on the account of the landlord or property owner unless the property owner voluntarily agrees to that requirement, nor may the municipal corporation refuse to furnish services to a tenant in the tenant's name based upon the nonpayment of charges by a previous tenant.

(c) A public utility subject to this section may not demand or receive security in an amount that exceeds twice the estimated average periodic bill or three times the estimated average monthly bill.

(d) In the event of tenant nonpayment of all or a portion of the bill, the deposit shall be applied to the final bill issued when service is terminated.

(e) This section shall not apply to master-metered apartment buildings.

SEC. 2. Section 10016 of the Public Utilities Code is repealed.

SEC. 3. Section 12811.1 of the Public Utilities Code is amended to read:

12811.1. (a) A district may, by resolution or ordinance, require the owner of record of real property within the district to pay the fees, tolls, rates, rentals, or other charges for services rendered to a lessee, tenant, or subtenant, and those fees, tolls, rates, rentals, and other charges that have become delinquent, together with interest and penalties thereon, are a lien on the property when a certificate is filed in the office of the county recorder pursuant to subdivision (b) and the lien has the force, effect, and priority of a judgment lien. No lien may be created under this section on any publicly owned property.

(b) A lien under this section attaches when the district files for recordation in the office of the county recorder a certificate specifying the amount of the delinquent fees, tolls, rates, rentals, or other charges together with interest and penalties thereon; the name of the owner of record of the property to which services were rendered by the district; and the legal description of the property. Within 30 days of receipt of payment of all amounts due, including recordation fees paid by the district, the district shall file for recordation a release of the lien.

(c) In filing any instrument for recordation under this section, the district shall pay the fees specified in Sections 27361 and 27361.4 of the Government Code.

(d) The remedies in this section are in addition to any other remedy provided by law.

(e) This section does not apply to delinquent fees or charges for the furnishing of water or sewer service to residential property or electrical service.

SEC. 4. Section 12811.5 of the Public Utilities Code is repealed.

SEC. 5. Section 12822.6 of the Public Utilities Code is amended to read:

12822.6. (a) The decision of a district to require a new residential applicant to deposit a sum of money with the district prior to establishing an account and furnishing service shall be based solely upon the creditworthiness of the applicant as determined by the district.

(b) No municipal utility district owning or operating a public utility furnishing services for residential use to a tenant under an account established by the tenant shall seek to recover any charges or penalties for the furnishing of services to, or for the tenant's residential use from, any subsequent tenant or the property owner due to nonpayment of charges by a previous tenant. For this purpose, the term "subsequent tenant" shall not include any adult person who lived at the residence during the period that the charges or penalties accrued. The district may collect a deposit from the tenant service applicant prior to establishing an account for the tenant. The district may not require that service to subsequent tenants be furnished on the account of the landlord or property owner unless the property owner voluntarily agrees to that requirement, nor may the district refuse to furnish services to a tenant in the tenant's name based on the nonpayment of charges by a previous tenant.

(c) A district subject to this section may not demand or receive security in an amount that exceeds twice the estimated average periodic bill or three times the estimated average monthly bill.

(d) In the event of tenant nonpayment of all or a portion of the bill, the deposit shall be applied to the final bill issued when service is terminated.

(e) This section shall not apply to master-metered apartment buildings.

SEC. 6. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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

CHAPTER 740

An act to amend Section 655.1 of the Harbors and Navigations Code, to amend Section 21407.2 of the Public Utilities Code, and to

amend Sections 21200.5 and 23157 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 19, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. Section 655.1 of the Harbors and Navigation Code is amended to read:

655.1. (a) As used in this section, "mechanically propelled vessel" means any vessel actively propelled by machinery, whether or not the machinery is the principal source of propulsion.

(b) A peace officer, having reasonable cause to believe that any person was operating a mechanically propelled vessel or manipulating any water skis, aquaplane, or similar device under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug, who lawfully arrests the person for any violation of subdivision (b), (c), (d), (e), or (f) of Section 655, may request that person to submit to chemical testing of his or her blood, breath, or urine for the purpose of determining the drug or alcoholic content of the blood. The arrested person shall be informed that a refusal to submit to, or failure to complete, the required chemical testing may be used against the person in a court of law and that the court may impose increased penalties for that refusal or failure, upon conviction.

(c) (1) If the person is lawfully arrested for operating a mechanically propelled vessel or manipulating any water skis, aquaplane, or similar device under the influence of an alcoholic beverage and submits to the chemical testing, the person has the choice of whether the chemical test shall be of his or her blood or breath and the person shall be advised by the arresting officer that he or she has that choice. If the person arrested either is incapable, or states that he or she is incapable, of completing the chosen test, the person shall submit to the remaining test. If a blood or breath test, or both, are unavailable, then subdivision (n) applies.

(2) If the person is lawfully arrested for operating a mechanically propelled vessel or manipulating any water skis, aquaplane, or similar device under the influence of any drug or the combined influence of an alcoholic beverage and any drug and submits to the chemical testing, the person has the choice of whether the chemical test shall be of his or her blood, breath, or urine, and the officer shall advise the person that he or she has that choice.

(d) The arresting officer shall advise a person submitting to chemical testing under this section that he or she does not have the right to have an attorney present before stating whether he or she will submit to the chemical testing, before deciding which chemical

test or tests to take, or during the administration of the chemical test or tests chosen.

(e) A person who chooses to submit to a breath test may also be requested to submit to a blood or urine test if the arresting officer has reasonable cause to believe that the person was operating a mechanically propelled vessel or manipulating any water skis, aquaplane, or similar device under the influence of any drug, or the combined influence of an alcoholic beverage and any drug, and if the arresting officer has a clear indication that a blood or urine test will reveal evidence of the person being under the influence. The arresting officer shall state in his or her report the facts upon which that belief and that clear indication are based. The person shall have the choice of submitting to and completing a blood or urine test, and shall be advised by the arresting officer that he or she is requested to submit to an additional test, and that he or she may choose a test of either blood or urine. If the person arrested is either incapable, or states that he or she is incapable, of completing either chosen chemical test, the person shall submit to and complete the other remaining chemical test.

(f) (1) A person who chooses to submit to a breath test shall be advised before or after the breath test that the breath-testing equipment does not retain any sample of the breath, and that no breath sample will be available after the breath test which could be analyzed later by the person or any other person.

(2) The person shall also be advised that, because no breath sample is retained, the person will be given an opportunity to provide a blood or urine sample that will be retained at no cost to the person so that there will be something retained that may be subsequently analyzed for the alcoholic content of the persons's blood. If the person completes a breath test and wishes to provide a blood or urine sample to be retained, the sample shall be collected and retained in the same manner as if the person had chosen a blood or urine test initially.

(3) The person shall also be advised that the blood or urine sample may be tested by either party in any criminal prosecution. The failure of either party to perform this chemical test shall place no duty upon the opposing party to perform the chemical test nor affect the admissibility of any other evidence of the drug or alcoholic content of the blood of the person arrested.

(g) If the person is lawfully arrested for any offense allegedly committed in violation of subdivision (b), (c), (d), (e), or (f) of Section 655, and because of the need for medical treatment, the person is first transported to a medical facility where it is not feasible to administer a particular chemical test of, or to obtain a particular sample of, the person's blood, breath, or urine, the person has the choice of submitting to those chemical tests which are available at the facility to which that person has been transported. In this event, the arresting officer shall advise the person of those chemical tests which

are available at the medical facility, and that the person's choice is limited to those chemical tests which are available.

(h) Any person who is unconscious or otherwise in a condition rendering him or her incapable of refusal may be subjected to chemical testing of his or her blood, breath, or urine for the purpose of determining the drug or alcoholic content of the blood, whether or not the person is informed that a refusal to submit to, or failure to complete, the required chemical testing may be used against the person in a court of law, and that the court may impose increased penalties upon conviction.

(i) Any person who is afflicted with hemophilia is exempt from the blood test provided for in this section.

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

(k) A person lawfully arrested for any offense allegedly committed while the person was operating a mechanically propelled vessel or manipulating any water skis, aquaplane, or similar device in violation of subdivision (b), (c), (d), (e), or (f) of Section 655 may request the arresting officer to have a chemical test made of his or her blood or breath for the purpose of determining the drug or alcoholic content of the blood and, if so requested, the arresting officer shall have the chemical test performed. However, if a blood or breath test, or both, are unavailable, then subdivision (n) applies.

(*l*) Any chemical test of blood, breath, or urine to determine the percentage, by weight, of alcohol in the blood shall be performed in accordance with Section 23158 of the Vehicle Code.

(m) Nothing in this section limits the authority of a peace officer to gather evidence from a person lawfully arrested for a violation of subdivision (b), (c), (d), (e), or (f) of Section 655.

(n) If a blood or breath test is not available under paragraph (1) of subdivision (c) or under subdivision (k), the person shall submit to the remaining test in order to determine the percent, by weight, of alcohol in the person's blood. If both the blood and breath tests are unavailable, the person shall be deemed to have given his or her consent to chemical testing of his or her urine and shall submit to a urine test.

SEC. 2. Section 21407.2 of the Public Utilities Code is amended to read:

21407.2. (a) (1) (A) Any person who operates an aircraft in the air or on the ground or water is deemed to have given his or her consent to chemical testing of his or her blood or breath for the purpose of determining the alcoholic content of his or her blood, if lawfully arrested for any offense allegedly committed in violation of Section 21407.1 or if the officer requests chemical testing as part of any investigation of a suspected violation of state or local law. If a blood or breath test, or both, are unavailable, then paragraph (2) of subdivision (d) applies.

(B) Any person who operates an aircraft in the air or on the ground or water is deemed to have given his or her consent to chemical testing of his or her blood or urine for the purpose of determining the drug content of his or her blood, if lawfully arrested for any offense allegedly committed in violation of Section 21407.1 or if the officer requests chemical testing as part of an investigation of a suspected violation of state or local law.

(C) The testing shall be administered at the direction of a peace officer having reasonable cause to believe the person was operating an aircraft in violation of Section 21407.1 under either of the following conditions:

(i) The person is lawfully arrested.

(ii) The officer requests the person to submit to chemical testing as part of an investigation of a suspected violation of state or local law.

(D) The person shall be told that his or her failure to submit to, or the failure to complete, the required chemical testing may result in prohibition from operating an aircraft for not more than one year and, if the person is convicted of a violation of Section 21407.1, a fine, imprisonment, prohibition from operating an aircraft for not more than one year, or any combination thereof.

(2) (A) If the person is lawfully arrested for operating an aircraft under the influence of an alcoholic beverage, the person has the choice of whether the test shall be of his or her blood or breath, and the officer shall advise the person that he or she has that choice. If the person arrested either is incapable, or states that he or she is incapable, of completing the chosen test, the person shall submit to the remaining test. If a blood or breath test, or both, are unavailable, then paragraph (2) of subdivision (d) applies.

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

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

(3) If the person is lawfully arrested for an offense allegedly committed in violation of Section 21407.1 and, because of the need for medical treatment, the person is first transported to a medical facility where it is not feasible to administer a particular test of, or to obtain a particular sample of, the person's blood, breath, or urine, the person has the choice of those tests which are available at the facility to which that person has been transported. In that event, the officer shall advise the person of those tests which are available at the medical facility and that the person's choice is limited to those tests which are available.

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

(5) Any person who is unconscious or otherwise in a condition rendering him or her incapable of refusal is deemed not to have withdrawn his or her consent and a test or tests may be administered whether or not the person is told that his or her failure to submit to, or the noncompletion of, the test or tests may result in a fine, imprisonment, and prohibition from operating an aircraft for not more than one year. Any person who is dead is deemed not to have withdrawn his or her consent and a test or tests may be administered at the direction of a peace officer.

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

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

(d) (1) A person lawfully arrested for any offense allegedly committed while the person was operating an aircraft in violation of Section 21407.1 may request the arresting officer to have a chemical test made of the arrested person's blood or breath for the purpose of determining the alcoholic content of that person's blood, and, if so requested, the arresting officer shall have the test performed.

(2) If a blood or breath test is not available under subparagraph (A) of paragraph (1) of subdivision (a), or under subparagraph (A) of paragraph (2) of subdivision (a), or under paragraph (1) of this subdivision, the person shall submit to the remaining test in order to determine the percent, by weight, of alcohol in the person's blood. If both the blood and breath tests are unavailable, the person shall be deemed to have given his or her consent to chemical testing of his or her urine and shall submit to a urine test.

SEC. 3. Section 21200.5 of the Vehicle Code is amended to read:

21200.5. Notwithstanding Section 21200, it is unlawful for any person to ride a bicycle upon a highway while under the influence of an alcoholic beverage or any drug, or under the combined

influence of an alcoholic beverage and any drug. Any person arrested for a violation of this section may request to have a chemical test made of the person's blood, breath, or urine for the purpose of determining the alcoholic or drug content of that person's blood pursuant to Section 23157, and, if so requested, the arresting officer shall have the test performed. A conviction of a violation of this section shall be punished by a fine of not more than two hundred fifty dollars ($250). Violations of this section are subject to Section 13202.5.

SEC. 4. Section 23157 of the Vehicle Code is amended to read:

23157. (a) (1) (A) Any person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood or breath for the purpose of determining the alcoholic content of his or her blood, if lawfully arrested for any offense allegedly committed in violation of Section 23140, 23152, or 23153. If a blood or breath test, or both, are unavailable, then paragraph (2) of subdivision (d) applies.

(B) Any person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood or urine for the purpose of determining the drug content of his or her blood, if lawfully arrested for any offense allegedly committed in violation of Section 23140, 23152, or 23153.

(C) The testing shall be incidental to a lawful arrest and administered at the direction of a peace officer having reasonable cause to believe the person was driving a motor vehicle in violation of Section 23140, 23152, or 23153.

(D) The person shall be told that his or her failure to submit to, or the failure to complete, the required chemical testing will result in a fine, mandatory imprisonment if the person is convicted of a violation of Section 23152 or 23153, and (i) the suspension of the person's privilege to operate a motor vehicle for a period of one year, (ii) the revocation of the person's privilege to operate a motor vehicle for a period of two years if the refusal occurs within seven years of a separate violation of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code which resulted in a conviction, or if the person's privilege to operate a motor vehicle has been suspended or revoked pursuant to Section 13353, 13353.1, or 13353.2 for an offense which occurred on a separate occasion, or (iii) the revocation of the person's privilege to operate a motor vehicle for a period of three years if the refusal occurs within seven years of two or more separate violations of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, or any combination thereof, which resulted in convictions, or if the person's privilege to operate a motor vehicle has been suspended or revoked two or more times pursuant to Section 13353, 13353.1, or 13353.2 for offenses which occurred on separate

occasions, or if there is any combination of those convictions or administrative suspensions or revocations.

(2) (A) If the person is lawfully arrested for driving under the influence of an alcoholic beverage, the person has the choice of whether the test shall be of his or her blood or breath and the officer shall advise the person that he or she has that choice. If the person arrested either is incapable, or states that he or she is incapable, of completing the chosen test, the person shall submit to the remaining test. If a blood or breath test, or both, are unavailable, then paragraph (2) of subdivision (d) applies.

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

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

(3) If the person is lawfully arrested for an offense allegedly committed in violation of Section 23140, 23152, or 23153, and, because of the need for medical treatment, the person is first transported to a medical facility where it is not feasible to administer a particular test of, or to obtain a particular sample of, the person's blood, breath, or urine, the person has the choice of those tests which are available at the facility to which that person has been transported. In that case, the officer shall advise the person of those tests which are available at the medical facility and that the person's choice is limited to those tests which are available.

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

(5) Any person who is unconscious or otherwise in a condition rendering him or her incapable of refusal is deemed not to have withdrawn his or her consent and a test or tests may be administered

whether or not the person is told that his or her failure to submit to, or the noncompletion of, the test or tests will result in the suspension or revocation of his or her privilege to operate a motor vehicle. Any person who is dead is deemed not to have withdrawn his or her consent and a test or tests may be administered at the direction of a peace officer.

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

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

(d) (1) A person lawfully arrested for any offense allegedly committed while the person was driving a motor vehicle in violation of Section 23140, 23152, or 23153 may request the arresting officer to have a chemical test made of the arrested person's blood or breath for the purpose of determining the alcoholic content of that person's blood, and, if so requested, the arresting officer shall have the test performed.

(2) If a blood or breath test is not available under subparagraph (A) of paragraph (1) of subdivision (a), or under subparagraph (A) of paragraph (2) of subdivision (a), or under paragraph (1) of this subdivision, the person shall submit to the remaining test in order to determine the percent, by weight, of alcohol in the person's blood. If both the blood and breath tests are unavailable, the person shall be deemed to have given his or her consent to chemical testing of his or her urine and shall submit to a urine test.

(e) If the person, who has been arrested for a violation of Section 23140, 23152, or 23153, refuses or fails to complete a chemical test or tests, or requests that a blood or urine test be taken, the peace officer, acting on behalf of the department, shall serve the notice of the order of suspension or revocation of the person's privilege to operate a motor vehicle personally on the arrested person. The notice shall be on a form provided by the department.

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

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

(h) A preliminary alcohol screening test that indicates the presence or concentration of alcohol based on a breath sample in order to establish reasonable cause to believe the person was driving a vehicle in violation of Section 23140, 23152, or 23153 is a field sobriety test and may be used by an officer as a further investigative tool.

(i) If the officer decides to use a preliminary alcohol screening test, the officer shall advise the person that he or she is requesting that person to take a preliminary alcohol screening test to assist the officer in determining if that person is under the influence of alcohol or drugs, or a combination of alcohol and drugs. The person's obligation to submit to a blood, breath, or urine test, as required by this section, for the purpose of determining the alcohol or drug content of that person's blood, is not satisfied by the person submitting to a preliminary alcohol screening test. The officer shall advise the person of that fact and of the person's right to refuse to take the preliminary alcohol screening test.

CHAPTER 741

An act to amend Sections 17199.3 and 17199.4 of, and to repeal Section 94153 of, the Education Code, relating to educational facilities, and making an appropriation therefor.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. Section 17199.3 of the Education Code is amended to read:

17199.3. (a) The total amount of revenue bonds which may be issued and outstanding at any time for purposes of this chapter, other than those revenue bonds issued under Section 17199.4, shall not exceed four hundred million dollars ($400,000,000).

(b) The total amount that may be outstanding at any time under this chapter, for purposes of Section 17199.4 only, shall not exceed four billion dollars ($4,000,000,000).

(c) For purposes of subdivisions (a) and (b), bonds which meet any of the following conditions shall not be deemed to be outstanding:

(1) Bonds which have been refunded pursuant to Section 17188.

(2) Bonds for which money or securities in amounts necessary to pay or redeem the principal, interest, or any redemption premium on the bonds have been deposited in trust.

(3) Bonds which have been issued to provide working capital.

SEC. 2. Section 17199.4 of the Education Code is amended to read:

17199.4. (a) Notwithstanding any other law, any participating school district or county office of education, in connection with securing financing or refinancing of projects, except working capital, pursuant to this chapter may elect to guarantee or provide for payment of the bonds in accordance with the following conditions:

(1) If a participating school district or county office of education adopts a resolution by a majority vote of its board to participate under this section, it shall provide notice to the Controller of that election. The notice shall include a schedule for the repayment of principal and interest on the bonds and identify a trustee appointed by the participating school district or county office of education or the authority for purposes of this section. The notice shall be provided not later than the date of issuance of the bonds.

(2) If, for any reason, the school district or county office of education will not make the payment of principal and interest at the time the payment is required, the participating school district or county office of education shall notify the trustee of that fact and of the amount of the deficiency. The trustee shall immediately communicate that information to the Controller.

(3) Upon receipt of the notice required by paragraph (2), the Controller shall make an apportionment to the trustee in the amount of the deficiency for the purpose of making the required payment of principal or interest, or both. The Controller shall make that apportionment only from moneys in Section A of the State School Fund designated for apportionment to the district pursuant to Section 42238 or to the county office of education pursuant to Section 2558.

(4) As an alternative to the procedures set forth in paragraphs (2) and (3), the participating school district or county office of education may provide a transfer schedule in its notice to the Controller of its election to participate under this section. The transfer schedule shall set forth amounts to be transferred to the trustee and the date for the transfers. The Controller shall, subject to the limitation in the last sentence of paragraph (3), make apportionments to the trustee of those amounts on the specified date for the purpose of making those transfers.

(b) The amount apportioned for a school district or for a county office of education pursuant to this section shall be deemed to be an allocation to the district or the county office of education for purposes of subdivision (b) of Section 8 of Article XVI of the California Constitution. For purposes of computing revenue limits pursuant to Section 42238 for any school district or pursuant to Section 2558 for any county office of education, the revenue limit for any fiscal year in which funds are apportioned for the district or for the county office of education pursuant to this section shall include any amounts apportioned by the Controller pursuant to paragraphs (3) and (4) of subdivision (a).

(c) (1) School districts or county offices of education that elect to participate under this section shall apply to the authority. The authority shall consider each of the following priorities in making funds available:

(A) First priority shall be given to school districts or county offices of education that apply for funding for instructional classroom space.

(B) Second priority shall be given to school districts or county offices of education that apply for funding of modernization of instructional classroom space.

(C) Third priority shall be given to all other eligible costs, as defined in Section 17173.

(2) The authority shall prioritize applications at appropriate intervals.

(3) A school district electing to participate under this section that has applied for revenue bond moneys for the purposes of joint venture school facilities construction projects, pursuant to Article 5 (commencing with Section 17060) of Chapter 12, shall not be subject to the priorities set forth in paragraph (1).

(d) This section shall not be construed to make the State of California liable for any payment of principal or interest on any bonds or certificates of participation within the meaning of Section 1 of Article XVI of the California Constitution or otherwise, except as expressly provided in this section.

(e) A school district that has a qualified or negative certification pursuant to Section 42131, or a county office of education that has a qualified or negative certification pursuant to Section 1240, may not participate under this section.

(f) The authority shall report to the Legislature by January 1, 2001, on the number of school districts or county offices of education electing to participate under this section and on the financial stability of the participating school districts and county offices of education.

SEC. 3. Section 94153 of the Education Code is repealed.

CHAPTER 742

An act to add Sections 48070.5 and 60648 to the Education Code, relating to education.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) It is crucial for the success of the public school system and for the greatest achievement of each individual pupil that all educators

hold, and act upon, high expectations for the academic achievement of every pupil.

(b) With the development of rigorous academic standards in each discipline for each grade level, it is the expectation of the Legislature and the Governor that all public school educators will do all that is necessary so that each pupil meets high academic standards.

(c) Therefore, the Legislature and the Governor declare that school districts must address the academic deficiencies of every pupil.

SEC. 2. Section 48070.5 is added to the Education Code, to read:

48070.5. (a) In addition to the policy adopted pursuant to Section 48070, the governing board of each school district and each county board of education shall, in those applicable grade levels, approve a policy regarding the promotion and retention of pupils between the following grades:

(1) Between second grade and third grade.

(2) Between third grade and fourth grade.

(3) Between fourth and fifth grade.

(4) Between the end of the intermediate grades and the beginning of middle school grades which typically occurs between sixth grade and seventh grade, but may vary depending upon the grade configuration of the school or school district.

(5) Between the end of the middle school grades and the beginning of high school which typically occurs between eighth grade and ninth grade, but may vary depending upon the grade configuration of the school or school district.

(b) The policy shall provide for the identification of pupils who should be retained and who are at risk of being retained in their current grade level on the basis of either of the following:

(1) The results of the assessments administered pursuant to Article 4 (commencing with Section 60640) of Chapter 5 of Part 33 and the minimum levels of proficiency recommended by the State Board of Education pursuant to Section 60648.

(2) The pupil's grades and other indicators of academic achievement designated by the district.

(c) The policy shall base the identification of pupils pursuant to subdivision (b) at the grade levels identified pursuant to paragraph (1) and (2) of subdivision (a) primarily on the basis of the pupil's level of proficiency in reading. The policy shall base the identification of pupils pursuant to subdivision (b) at the grade levels identified pursuant to paragraphs (3) through (5) of subdivision (a) on the basis of the pupil's level of proficiency in reading, English language arts, and mathematics.

(d) (1) If either measure identified in paragraph (1) or (2) of subdivision (b) identifies that a pupil is performing below the minimum standard for promotion, the pupil shall be retained in his or her current grade level unless the pupil's regular classroom teacher determines in writing that retention is not the appropriate

intervention for the pupil's academic deficiencies. This written determination shall specify the reasons that retention is not appropriate for the pupil and shall include recommendations for interventions other than retention that in the opinion of the teacher are necessary to assist the pupil to attain acceptable levels of academic achievement. If the teacher's recommendation to promote is contingent upon the pupil's participation in a summer school or interim session remediation program, the pupil's academic performance shall be reassessed at the end of the remediation program, and the decision to retain or promote the pupil shall be reevaluated at that time. The teacher's evaluation shall be provided to and discussed with the pupil's parent or guardian and the school principal before any final determination of pupil retention or promotion.

(2) If the pupil does not have a single regular classroom teacher, the policy adopted by the school district shall specify the teacher or teachers responsible for the promotion or retention decision.

(e) The policy shall provide for parental notification when a pupil is identified as being at risk of retention. This notice shall be provided as early in the school year as practicable. The policy shall provide a pupil's parent or guardian the opportunity to consult with the teacher or teachers responsible for the decision to promote or retain the pupil.

(f) The policy shall provide a process whereby the decision of the teacher to retain or promote a pupil may be appealed. If an appeal is made, the burden shall be on the appealing party to show why the decision of the teacher should be overruled.

(g) The policy shall provide that pupils who are at-risk of being retained in their current grade be identified as early in the school year, and as early in their school careers, as practicable.

(h) The policy shall indicate the manner in which opportunities for remedial instruction will be provided to pupils who are recommended for retention or who are identified as being at risk for retention.

(i) The policy adopted pursuant to this section shall be adopted at a public meeting of the governing board of the school district.

(j) Nothing in this section shall be construed to prohibit the retention of a pupil not included in grade levels identified pursuant to subdivision (a), or for reasons other than those specified in subdivision (b), if such retention is determined to be appropriate for that pupil. Nothing in this section shall be construed to prohibit a governing board from adopting promotion and retention policies that exceed the criteria established in this section.

SEC. 3. Section 60648 is added to the Education Code, to read:

60648. The Superintendent of Public Instruction shall recommend, and the State Board of Education shall adopt, levels of pupil performance on achievement tests administered pursuant to Article 4 (commencing with Section 60640) of Chapter 5 of Part 33

in reading, English language arts, and mathematics at each grade level. The performance levels shall identify and establish the level of performance that is deemed to be the minimum level required for satisfactory performance in the next grade. These levels of performance shall only be adopted after the achievement tests have been aligned, pursuant to paragraph (3) of subdivision (a) of Section 60643, to the content and performance standards adopted by the State Board of Education pursuant to subdivision (a) of Section 60605.

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

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

CHAPTER 743

An act to add Section 37252.5 to the Education Code, relating to summer school, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. Section 37252.5 is added to the Education Code, to read:

37252.5. (a) The governing board of each district maintaining any or all of grades 2 to 9, inclusive, shall offer programs of direct, systematic, and intensive supplemental instruction to pupils enrolled in grades 2 to 9, inclusive, who have been retained pursuant to Section 48070.5, as added by Assembly Bill 1626 of the 1997–98 Regular Session. A school district may require a pupil who has been retained to participate in supplemental instructional programs. Notwithstanding the requirements of this section, the school district shall provide a mechanism for a parent or guardian to decline to enroll his or her child in the program. Attendance in supplemental instructional programs shall not be compulsory within the meaning of Section 48200.

(b) The governing board of each district maintaining any or all of grades 2 to 6, inclusive, may offer programs of direct, systematic, and intensive supplemental instruction to pupils enrolled in grades 2 to 6, inclusive, with low mathematics, reading, or written expression scores to allow those pupils to achieve proficiency in standards adopted by the State Board of Education. Services offered pursuant to this subdivision shall be provided to pupils in the following priority order:

(1) Pupils who have been recommended for retention or who have been identified as being at risk of retention pursuant to Section 48070.5, as added by Assembly Bill 1626 of the 1997–98 Regular Session, or school district policies.

(2) Pupils who have been identified as having a deficiency in mathematics, reading, or written expression based on the results of the tests administered under the Standardized Testing and Reporting Program established pursuant to Article 4 (commencing with Section 60640) of Chapter 5 of Part 33.

(c) Supplemental educational services pursuant to subdivisions (a) and (b) shall be offered during the summer, after school, on Saturdays, or during intersession, or in a combination of summer school, after school, Saturday, or intersession instruction. Services shall not be provided during the pupil's regular instructional day if it would result in the pupil being removed from classroom instruction in the core curriculum.

(d) For purposes of this section, a pupil shall be considered to be enrolled in a grade immediately upon completion of the preceding grade. Summer school instruction may also be offered to pupils who were enrolled in grade 6 during the prior fiscal year after the completion of grade 6. For ninth grade pupils identified in subdivision (a), summer school instruction may also be offered to pupils who were enrolled in grade 9 during the prior fiscal year after the completion of grade 9.

(e) Each school district shall use results from tests administered under the Standardized Testing and Reporting Program, established pursuant to Article 4 (commencing with Section 60640) of Chapter 5 of Part 33 or other evaluative criteria to identify eligible pupils pursuant to subdivision (b).

(f) An intensive remedial program in reading or written expression offered pursuant to this section shall, as needed, include instruction in phoneme awareness, systematic explicit phonics and decoding, word attack skills, spelling and vocabulary, explicit instruction of reading comprehension, writing, and study skills.

(g) Each school district shall seek the active involvement of parents and classroom teachers in the development and implementation of supplemental instructional programs provided pursuant to this section.

(h) It is the intent of the Legislature that pupils who are at risk of failing to meet state adopted standards, or who are at risk of

retention, be identified as early in the school year, and as early in their school careers as possible and be provided the opportunity for supplemental instruction sufficient to assist them in attaining expected levels of academic achievement.

(i) (1) The maximum amount of funding for the purposes of programs offered pursuant to this section to serve pupils in grades 2 to 6, inclusive, shall not exceed 10 percent of the statewide total enrollment in grades 2 to 6, inclusive, for the prior fiscal year multiplied by 120 hours, multiplied by the hourly rate for the current fiscal year determined pursuant to subdivision (c) of Section 42239, as added by Senate Bill 1370 of the 1997–98 Regular Session (hereafter Section 42239). Any funding provided for the purposes of this section shall first be used by the district to provide services required pursuant to subdivision (a), and shall be allocated in the following manner:

(A) Notwithstanding subdivision (e) of Section 42239, a school district that offers instruction pursuant to subdivisions (a) and (b) to serve pupils in grades 2 to 6, inclusive, shall be entitled to receive an additional reimbursement in an amount up to 5 percent of the district's total enrollment in grades 2 to 6, inclusive, for the prior fiscal year multiplied by 120 hours, multiplied by the hourly rate for the current fiscal year determined pursuant to subdivision (c) of Section 42239.

(B) The balance of the appropriation made for the purposes of funding programs offered pursuant to this section to serve pupils in grades 2 to 6, inclusive, shall be allocated for reimbursement for pupil attendance in instruction pursuant to subdivisions (a) and (b) that is in excess of 5 percent of the district's enrollment for the prior year in grades 2 to 6, inclusive, multiplied by 120 hours, multiplied by the hourly rate for the current fiscal year determined pursuant to subdivision (c) of Section 42239.

(2) If the funds claimed by school districts pursuant to subparagraph (B) of paragraph (1) of this subdivision exceed the available balance of the appropriation made for the purposes of funding programs offered pursuant to this section in paragraph (1) of this subdivision after the minimum allocation to eligible districts has been made pursuant to subparagraph (A) of paragraph (1) of this subdivision, the allocation of the balance shall be prorated based on each district's share of the total additional hours of instruction offered pursuant to subparagraph (B) of paragraph (1) of this subdivision.

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 implement the intensive supplemental instruction programs established by this act as expeditiously as possible, it is necessary that this measure take effect immediately.

CHAPTER 744

An act to add Sections 35179.1 and 35179.2 to, and to add the headings of Article 4.5 (commencing with Section 35179) and Article 4.7 (commencing with Section 35181) to Chapter 2 of Part 21 of, the Education Code, relating to interscholastic athletics.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. A heading is added as Article 4.5 (commencing with Section 35179) to Chapter 2 of Part 21 of the Education Code, to read:

Article 4.5. Interscholastic Athletics

SEC. 2. Section 35179.1 is added to the Education Code, to read:

35179.1. (a) This section shall be known and may be cited as the 1998 California High School Coaching Education and Training Program.

(b) The Legislature finds and declares all of the following:

(1) The exploding demand in girls athletics, and an increase in the number of students participating in both boys and girls athletics, are causing an increase in the number of coaches needed statewide.

(2) Well-trained coaches are vital to the success of a student's experience in sports and interscholastic athletic activities.

(3) Improvement in coaching is a primary need identified by hundreds of principals, superintendents, and school board members who participated in the development of a strategic plan for the California Interscholastic Federation (CIF) in 1993 and 1994.

(4) There are many concerns about safety, training, organization, philosophy, communications, and general management in coaching that need to be addressed.

(5) It is a conservative estimate that at least 25,000 coaches annually need training and an orientation just to meet current coaching regulations contained in Title 5 of the California Code of Regulations, including basic safety and CPR requirements.

(6) School districts, in conjunction with the California Interscholastic Federation, have taken the initial first steps toward building a statewide coaching education program by assembling a faculty of statewide trainers composed of school district administrators, coaches, and athletic directors using a national program being used in several states.

(c) It is, therefore, the intent of the Legislature to establish a California High School Coaching Education and Training Program. It is the intent of the Legislature that the program be administered by local school districts and emphasize the following components:

(1) Development of coaching philosophies consistent with school, school district, and school board goals.

(2) Sport psychology: emphasizing communication, reinforcement of young people's efforts, effective delivery of coaching regarding technique and motivation of the student athlete.

(3) Sport pedagogy: how young athletes learn, and how to teach sport skills.

(4) Sport physiology: principles of training, fitness for sport, development of a training program, and nutrition for athletes.

(5) Sport management: team management, risk management, and working within the context of an entire school program.

(6) Training: certification in CPR and first aid.

(7) Knowledge of, and adherence to, statewide rules and regulations, as well as school regulations including, but not necessarily limited to, eligibility, gender equity and discrimination.

(8) Sound planning and goal setting.

(d) This section shall not be construed as an endorsement of any particular coaching education or training program.

SEC. 3. Section 35179.2 is added to the Education Code, to read:

35179.2. (a) Subject to funds being appropriated for this purpose, the California Interscholastic Federation is encouraged to establish a statewide panel that includes, at a minimum, the following members: school administrators, school board members, coaches of secondary school athletics, teachers, parents, athletic directors, representatives of higher education, pupils participating in athletics at the secondary school level, and a representative of the State Department of Education, as described in Section 35179.3.

(b) The panel established pursuant to subdivision (a) is encouraged to develop an application process whereby public secondary schools may submit applications to the State Department of Education for grants to offset the costs of education and training of athletic coaches in an education and training program that emphasizes the components set forth in subdivision (c) of Section 35179.1.

(c) The panel established pursuant to subdivision (a) is encouraged to evaluate applications submitted to the State Department of Education pursuant to subdivision (b) and to recommend applicants to the State Department of Education for the award of dollar-for-dollar matching grants, in an amount determined by the department. As a condition of receiving a grant, a school district shall submit to the panel, for compilation and transmission to the Legislature and the State Department of Education, a report describing the amount and source of the local matching funds used, the coaching education and training program, the actual costs of the education and training provided, the dates and location of the education and training provided, and a list of persons certified through the education and training program.

SEC. 4. Section 35179.3 is added to the Education Code, to read:

35179.3. If the California Interscholastic Federation establishes a statewide panel pursuant to Section 35179.2, the State Department of Education shall do all of the following:

(a) Provide a department representative to assist the panel in developing an application and grant distribution process.

(b) Review recommendations submitted by the panel for the award of dollar-for-dollar matching grants to public secondary school applicants.

(c) Determine which public secondary school applicants will receive dollar-for-dollar matching grants.

(d) Determine the amount of the grants.

SEC. 5. A heading is added as Article 4.7 (commencing with Section 35181) to Chapter 2 of Part 21 of the Education Code, to read:

Article 4.7. Miscellaneous Administrative Authority

CHAPTER 745

An act to add Section 7583.45 to the Business and Professions Code, to amend Section 35021.5 of, and to add Sections 38001.5 and 72330.5 to, the Education Code, and to amend Section 832.2 of the Penal Code, relating to peace officers.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. Section 7583.45 is added to the Business and Professions Code, to read:

7583.45. (a) After July 1, 2000, every security guard working on the property of a public K-12 school district or community college

district pursuant to a contract with a private licensed security agency who works more than 20 hours per week, shall complete a course of training developed no later than July 1, 1999, by the Bureau of Security and Investigative Services of the Department of Consumer Affairs. The course shall be developed in consultation with the Commission on Peace Officer Standards and Training.

(b) No security guard required to register pursuant to this chapter who completes the course of training specified in subdivision (a) shall be hired on contract to work or shall continue to work as a school security officer on the property of a K-12 or community college school district after July 1, 2000, unless both of the following conditions are met:

(1) (A) The applicant or contracted employee has submitted two copies of his or her fingerprints on forms or electronically, as prescribed by the Department of Justice, to the Bureau of Security and Investigative Services of the Department of Consumer Affairs. The Bureau of Security and Investigative Services of the Department of Consumer Affairs shall submit the fingerprints to the Department of Justice, which shall submit one copy of the fingerprints to the United States Federal Bureau of Investigation.

(B) An applicant or contracted employee who holds a permanent registration with the Bureau of Security and Investigative Services as a security guard need only submit one copy of his or her fingerprints, which copy shall be submitted to the United States Federal Bureau of Investigation.

(C) An applicant or contracted employee who is registered by the Bureau of Security and Investigative Services, and who holds a firearms qualification card as specified in Section 7583.22, is exempt from the requirements of this subdivision.

(2) The applicant or contracted employee has been determined not to be prohibited from employment by a K-12 school district pursuant to Sections 44237 and 45122.1 of the Education Code or legally prohibited from employment by a community college, and had been determined by the Department of Justice not to be a person prohibited from possessing a firearm if the applicant is required to carry a firearm.

The Department of Justice may participate in the National Instant Criminal Background Check System (NICS) in lieu of submitting fingerprints to the United States Federal Bureau of Investigation in order to meet the requirements of this subdivision relating to firearms.

(c) For the purposes of this section, "security guard" means any person primarily employed or assigned to provide security services as a watchperson, security guard, or patrolperson on or about premises owned or operated by a school district to protect persons or property, to prevent the theft or unlawful taking of district property of any kind, or to report any unlawful activity to the district and local law enforcement agencies.

SEC. 2. Section 35021.5 of the Education Code is amended to read:

35021.5. (a) The governing board of a school district may establish an unpaid volunteer school police reserve officer corps to supplement a police department established pursuant to Section 38000. Any person deputized by a school district as a school police reserve officer shall complete the training prescribed by Section 832.2 of the Penal Code.

(b) It is the intent of the Legislature to allow school districts to use volunteer school police reserve officers to the extent necessary to provide a safe and secure school environment.

SEC. 3. Section 38001.5 is added to the Education Code, to read:

38001.5. (a) It is the intent of the Legislature to ensure the safety of pupils, staff, and the public on or near California's public schools, by providing school security officers with training that will enable them to deal with the increasingly diverse and dangerous situations they encounter.

(b) After July 1, 2000, every school security officer employed by a school district who works more than 20 hours a week as a school security officer shall complete a course of training developed no later than July 1, 1999, by the Bureau of Security and Investigative Services of the Department of Consumer Affairs in consultation with the Commission on Peace Officer Standards and Training pursuant to Section 7583.31 of the Business and Professions Code. If any school security officer subject to the requirements of this subdivision is required to carry a firearm while performing his or her duties, that school security officer shall additionally satisfy the training requirements of Section 832 of the Penal Code.

(c) For purposes of this chapter, "school security officer" means any person primarily employed or assigned pursuant to subdivision (b) to provide security services as a watchperson, security guard, or patrolperson on or about premises owned or operated by a school district to protect persons or property or to prevent the theft or unlawful taking of district property of any kind or to report any unlawful activity to the district and local law enforcement agencies.

(d) No school security officer shall be employed or shall continue to be employed by the district after July 1, 2000, until both of the following conditions have been met:

(1) (A) The applicant or employee has submitted to the district two copies of his or her fingerprints on forms or electronically, as prescribed by the Department of Justice. The district shall submit the fingerprints to the Department of Justice, which shall submit one copy of the fingerprints to the United States Federal Bureau of Investigation.

(B) An applicant or contracted employee who holds a permanent registration with the Bureau of Security and Investigative Services of the Department of Consumer Affairs as a security guard need only

submit one copy of his or her fingerprints, which copy shall be submitted to the United States Federal Bureau of Investigation.

(C) An applicant or contracted employee who is registered by the Bureau of Security and Investigative Services of the Department of Consumer Affairs, and who holds a firearms qualification card as specified in Section 7583.22 of the Business and Professions Code, is exempt from the requirements of this subdivision.

(2) The applicant or employee has been determined not to be a person prohibited from employment by a school district pursuant to Sections 44237 and 45122.1, or by the Department of Justice from possessing a firearm if the applicant is required to carry a firearm.

The Department of Justice may participate in the National Instant Criminal Background Check System (NICS) in lieu of submitting fingerprints to the United States Federal Bureau of Investigation in order to meet the requirements of this subdivision relating to firearms.

(e) Every school security officer employed by a school district prior to July 1, 2000, who works more than 20 hours a week as a school security officer shall meet the requirements of subdivision (b) by July 1, 2002, unless he or she has completed an equivalent course of instruction pursuant to Section 832.2 of the Penal Code.

SEC. 4. Section 72330.5 is added to the Education Code, to read:

72330.5. (a) It is the intent of the Legislature to ensure the safety of pupils, staff, and the public on or near California's community colleges, by providing community college security officers with training that will enable them to deal with the increasingly diverse and dangerous situations they encounter.

(b) After July 1, 2000, every school security officer employed by a community college district who works more than 20 hours a week as a school security officer shall complete a course of training developed no later than July 1, 1999, by the Bureau of Security and Investigative Services of the Department of Consumer Affairs in consultation with the Commission on Peace Officer Standards and Training pursuant to Section 7583.31 of the Business and Professions Code. If any community college security officer subject to the requirements of this subdivision is required to carry a firearm while employed, that security officer shall additionally satisfy the training requirements of Section 832 of the Penal Code.

(c) For purposes of this chapter, "security officer" means any person primarily employed or assigned pursuant to subdivision (b) to provide security services as a watchperson, security guard, or patrolperson on or about premises owned or operated by the community college district to protect persons or property or to prevent the theft or unlawful taking of district property of any kind or to report any unlawful activity to the district and local law enforcement.

(d) No security officer shall be employed or shall continue to be employed by the district after July 1, 2000, until both of the following conditions have been met:

(1) (A) The applicant or employee has submitted to the district two copies of his or her fingerprints on forms or electronically, as prescribed by the Department of Justice. The district shall submit the fingerprints to the Department of Justice, which shall submit one copy of the fingerprints to the United States Federal Bureau of Investigation.

(B) An applicant or employee who holds a permanent registration with the Bureau of Security and Investigative Services of the Department of Consumer Affairs as a security guard need only submit one copy of his or her fingerprints, which copy shall be submitted to the United States Federal Bureau of Investigation.

(C) An applicant or employee who is registered by the Bureau of Security and Investigative Services of the Department of Consumer Affairs, and who holds a firearms qualification card as specified in Section 7583.22 of the Business and Professions Code, is exempt from the requirements of this subdivision.

(2) The applicant or employee has been determined not to be a person legally prohibited from employment by the community college and has been determined by the Department of Justice not to be a person prohibited from possessing a firearm if the applicant is required to carry a firearm.

The Department of Justice may participate in the National Instant Criminal Background Check System (NICS) in lieu of submitting fingerprints to the United States Federal Bureau of Investigation in order to meet the requirements of this subdivision relating to firearms.

(e) Every security officer employed by a community college district prior to July 1, 2000, who works more than 20 hours a week as a school security officer shall meet the requirements of subdivision (b) by July 1, 2002, unless he or she has completed an equivalent course of instruction pursuant to Section 832.2 of the Penal Code.

SEC. 5. Section 832.2 of the Penal Code is amended to read:

832.2. Every school police reserve officer, as described in Section 38000 of the Education Code, shall complete a course of training approved by the Commission on Peace Officer Standards and Training relating directly to the role of school police reserve officers.

The school police reserve officer training course shall address guidelines and procedures for reporting offenses to other law enforcement agencies that deal with violence on campus and other school related matters, as determined by the Commission on Peace Officer Standards and Training.

CHAPTER 746

An act to add Sections 39672 and 72330.2 to the Education Code, and to amend Sections 830.32 and 832.3 of the Penal Code, relating to peace officers.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. Section 39672 is added to the Education Code, to read:

39672. Every school peace officer first employed by a K-12 public school district before July 1, 1999, shall, in order to retain his or her employment, fulfill both of the following conditions:

(a) The employee shall submit to the district one copy of his or her fingerprints on forms prescribed by the Department of Justice. The Department of Justice shall forward this copy to the United States Federal Bureau of Investigation.

(b) The employee shall be determined to be a person who is not prohibited from employment by a school district pursuant to Sections 44237 and 45122.1, and, if the employee is required to carry a firearm, shall be determined by the Department of Justice to be a person who is not prohibited from possessing a firearm.

The Department of Justice may participate in the National Instant Criminal Background Check System (NICS) in lieu of submitting fingerprints to the United States Federal Bureau of Investigation in order to meet the requirements of this section relating to firearms.

SEC. 2. Section 72330.2 is added to the Education Code, to read:

72330.2. Every member of a California Community College police department first employed by a California Community College district before July 1, 1999, shall, in order to retain his or her employment, fulfill both of the following conditions:

(a) The employee shall submit to the district one copy of his or her fingerprints on forms prescribed by the Department of Justice. The Department of Justice shall forward this copy to the United States Federal Bureau of Investigation.

(b) The employee shall be determined to be a person who is not prohibited from employment by the California Community College district, and, if the employee is required to carry a firearm, shall be determined by the Department of Justice to be a person who is not prohibited from possessing a firearm.

The Department of Justice may participate in the National Instant Criminal Background Check System (NICS) in lieu of submitting fingerprints to the United States Federal Bureau of Investigation in order to meet the requirements of this section relating to firearms.

SEC. 3. Section 830.32 of the Penal Code is amended to read:

830.32. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. Those peace officers may carry firearms only if authorized and under terms and conditions specified by their employing agency.

(a) Members of a California Community College police department appointed pursuant to Section 72330 of the Education Code, if the primary duty of the police officer is the enforcement of the law as prescribed in Section 72330 of the Education Code.

(b) Persons employed as members of a police department of a school district pursuant to Section 39670 of the Education Code, if the primary duty of the police officer is the enforcement of the law as prescribed in Section 39670 of the Education Code.

(c) Any peace officer employed by a K-12 public school district or California Community College district who has completed training as prescribed by subdivision (f) of Section 832.3 shall be designated a school police officer.

SEC. 4. Section 832.3 of the Penal Code is amended to read:

832.3. (a) Except as provided in subdivisions (b) and (e), any sheriff, undersheriff, or deputy sheriff of a county, any police officer of a city, and any police officer of a district authorized by statute to maintain a police department, who is first employed after January 1, 1975, shall successfully complete a course of training prescribed by the Commission on Peace Officer Standards and Training before exercising the powers of a peace officer, except while participating as a trainee in a supervised field training program approved by the Commission on Peace Officer Standards and Training. Each police chief, or any other person in charge of a local law enforcement agency, appointed on or after January 1, 1999, as a condition of continued employment, shall complete the course of training pursuant to this subdivision within two years of appointment. The training course for a sheriff, an undersheriff, and a deputy sheriff of a county, and a police chief and a police officer of a city or any other local law enforcement agency, shall be the same.

(b) For the purpose of standardizing the training required in subdivision (a), the commission shall develop a training proficiency testing program, including a standardized examination which enables (1) comparisons between presenters of the training and (2) development of a data base for subsequent training programs. Presenters approved by the commission to provide the training required in subdivision (a) shall administer the standardized examination to all graduates. Nothing in this subdivision shall make the completion of the examination a condition of successful completion of the training required in subdivision (a).

(c) Notwithstanding subdivision (c) of Section 84500 of the Education Code and any regulations adopted pursuant thereto, community colleges may give preference in enrollment to employed law enforcement trainees who shall complete training as prescribed by this section. At least 15 percent of each presentation shall consist of nonlaw enforcement trainees if they are available. Preference should only be given when the trainee could not complete the course within the time required by statute, and only when no other training program is reasonably available. Average daily attendance for these courses shall be reported for state aid.

(d) Prior to July 1, 1987, the commission shall make a report to the Legislature on academy proficiency testing scores. This report shall include an evaluation of the correlation between academy proficiency test scores and performance as a peace officer.

(e) (1) Any deputy sheriff described in subdivision (c) of Section 830.1 shall be exempt from the training requirements specified in subdivision (a) as long as his or her assignments remain custodial related.

(2) Deputy sheriffs described in subdivision (c) of Section 830.1 shall complete the training for peace officers pursuant to subdivision (a) of Section 832, and within 120 days after the date of employment, shall complete the training required by the Board of Corrections for custodial personnel pursuant to Section 6035, and the training required for custodial personnel of local detention facilities pursuant to Division 1 (commencing with Section 100) of Title 15 of the California Code of Regulations.

(3) Deputy sheriffs described in subdivision (c) of Section 830.1 shall complete the course of training pursuant to subdivision (a) prior to being reassigned from custodial assignments to duties with responsibility for the prevention and detection of crime and the general enforcement of the criminal laws of this state.

(f) Any school police officer first employed by a K-12 public school district or California Community College district after July 1, 1999, shall successfully complete a basic course of training as prescribed by subdivision (a) before exercising the powers of a peace officer. A school police officer shall not be subject to this subdivision while participating as a trainee in a supervised field training program approved by the Commission on Peace Officer Standards and Training.

(g) The commission shall prepare a specialized course of instruction for the training of school peace officers, as defined in Section 830.32, to meet the unique safety needs of a school environment. This course is intended to supplement any other training requirements.

(h) Any school peace officer first employed by a K-12 public school district or California Community College district before July 1, 1999, shall successfully complete the specialized course of training prescribed in subdivision (g) no later than July 1, 2002. Any school

police officer first employed by a K-12 public school district or California Community College district after July 1, 1999, shall successfully complete the specialized course of training prescribed in subdivision (g) within two years of the date of first employment.

SEC. 5. No reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law.

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

CHAPTER 747

An act to amend, repeal, and add Section 30503 of, to amend, renumber, and repeal Section 31751 of, to add Section 31751.3 to, to add a chapter heading immediately preceding Section 31751 of, and to add and repeal Sections 30504, 30804.7, and 31751.7 of, and Chapter 1.5 (commencing with Section 30520) to Division 14 of, and Chapter 2 (commencing with Section 31760) to Division 14.5 of, the Food and Agricultural Code, relating to dogs and cats.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. (a) The Legislature finds and declares that overpopulation of dogs and cats in California is a problem of great public concern. The overpopulation causes public health problems, adversely affects city and county animal control departments, and results in needlessly euthanized dogs and cats.

(b) It is the intent of the Legislature, by enacting this act, to reduce the number of unwanted dogs and cats in California. In order to reduce the number of stray dogs and cats on the streets, and the number euthanized in shelters each year, the birth rate must be reduced. Although the point may seem obvious, humans generally give birth to a single offspring, while dogs and cats give birth to litters. Additionally, dogs and cats reach sexual maturity relatively young and their gestation periods are comparatively short. The single most effective prevention of overpopulation among dogs and cats is spaying and neutering.

SEC. 2. Section 30503 of the Food and Agricultural Code is amended to read:

30503. (a) Except as otherwise provided in subdivision (b), no public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group shall sell or give away to a new owner any dog that has not been spayed or neutered.

For the purposes of this section a rescue group is a for profit or not for profit entity, or a collaboration of individuals with at least one of its purposes being the sale or placement of dogs that have been removed from a public animal control agency or shelter, society for the prevention of cruelty to animals shelter, or humane shelter or that have been previously owned by any person other than the original breeder of that dog.

(b) If a veterinarian licensed to practice veterinary medicine in this state certifies that a dog is too sick or injured to be spayed or neutered, or that it would otherwise be detrimental to the health of the dog to be spayed or neutered, the adopter or purchaser shall pay the public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group a deposit of not less than forty dollars ($40), and not more than seventy-five dollars ($75). The entity shall establish the amount of the deposit at the level it determines is necessary to encourage the spaying or neutering of dogs. The deposit shall be temporary, and shall only be retained until the dog is healthy enough to be spayed or neutered, as certified by a veterinarian licensed to practice veterinary medicine in this state. The dog shall be spayed or neutered within 14 business days of that certification. The adopter or purchaser shall obtain written proof of spaying or neutering from the veterinarian performing the operation. If the adopter or purchaser presents proof of spaying or neutering to the entity from which the dog was obtained within 30 business days of obtaining the proof, the adopter or purchaser shall receive a full refund of the deposit.

(c) Public animal control agencies or shelters, society for the prevention of cruelty to animals shelters, humane society shelters, and rescue groups may enter into cooperative agreements with each other and with veterinarians in lieu of requiring spaying and neutering deposits to carry out this section.

(d) Any funds from unclaimed deposits made pursuant to this section, as it read on January 1, 1999, and any funds from deposits that are unclaimed after January 1, 2000, may be expended only for programs to spay or neuter dogs and cats, including agreements with a society for the prevention of cruelty to animals or a humane society or licensed veterinarian to operate a program to spay or neuter dogs and cats.

(e) This section only applies to a county that has a population exceeding 100,000 persons as of January 1, 2000, and to cities within that county.

(f) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2006, deletes or extends that date.

SEC. 2.3. Section 30503 is added to the Food and Agricultural Code, to read:

30503. (a) No public pound, society for the prevention of cruelty to animals shelter, or humane shelter shall sell or give away any dog that has not been spayed or neutered, unless a deposit for spaying or neutering the dog has been tendered to the pound or shelter. The deposit shall be in the amount determined by the pound or shelter to be comparable to the lowest fee charged by veterinarians in the locale, but shall not exceed forty dollars ($40). A veterinarian shall perform the operation. If a female dog and her puppies are sold or given away to one individual, only a single deposit shall be required. The pound or shelter may make appropriate arrangements for the spaying or neutering of the dog, or may return the deposit to the person purchasing or receiving the dog upon presentation of a written statement or receipt from the veterinarian or clinic that the dog has been spayed or neutered. The deposit may also include an amount necessary to recover any additional costs under this section.

(b) Any dog over six months of age at the time it is sold or given away by the pound or shelter shall be spayed or neutered within 60 days, or the deposit shall be deemed unclaimed. Any dog six months of age or younger at the time it is sold or given away by the pound or shelter shall be spayed or neutered within six months, or the deposit shall be deemed unclaimed.

(c) Any deposit not claimed under subdivision (a) shall be used only for the following purposes:

(1) A public education program to prevent overpopulation of dogs and cats.

(2) A program to spay or neuter dogs and cats.

(3) A followup program to assure that animals sold or given away by the pound or shelter are spayed or neutered.

(4) Any additional costs incurred under this section.

(d) Public pounds, society for the prevention of cruelty to animals shelters, and humane shelters may enter into cooperative agreements with each other and with veterinarians in carrying out this section.

(e) This section shall become operative on January 1, 2006.

SEC. 2.5. Section 30504 is added to the Food and Agricultural Code, to read:

30504. (a) For purposes of this division, each member of a litter of puppies, weaned or unweaned, shall be treated as an individual animal.

(b) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2006, deletes or extends that date.

SEC. 3. Chapter 1.5 (commencing with Section 30520) is added to Division 14 of the Food and Agricultural Code, to read:

CHAPTER 1.5. SPECIAL PROVISIONS APPLICABLE TO COUNTIES WITH A POPULATION OF LESS THAN 100,000 PERSONS

30520. (a) This chapter only applies to a county that has a population of less than 100,000 persons as of January 1, 2000, and to cities within that county. A county whose population exceeds 100,000 persons in a year subsequent to January 1, 2000, shall be subject to Chapter 1 (commencing with Section 30501) commencing on January 1 of the year immediately following the year in which the population of that county exceeds 100,000 persons.

(b) Except as otherwise provided in this chapter, no public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group shall sell or give away any dog that has not been spayed or neutered.

(c) A public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group may not transfer to a new owner a dog that has not been spayed or neutered, except as provided in subdivision (d).

(d) A public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group may transfer to a new owner a dog that has not been spayed or neutered only if the animal shelter does both of the following:

(1) Requires a written agreement, executed by the recipient, acknowledging the dog is not spayed or neutered and the recipient agrees in writing to be responsible for ensuring the dog will be spayed or neutered within 30 business days after the agreement is signed.

(2) Receives from the recipient a sterilization deposit of not less than forty dollars ($40) and not more than seventy-five dollars ($75), the terms of which are part of the written agreement executed by the recipient under this section.

(e) Public animal control agencies or shelters, society for the prevention of cruelty to animals shelters, humane society shelters, and rescue groups may enter into cooperative agreements with each other and with veterinarians in lieu of requiring spaying and neutering deposits to carry out this section.

30521. (a) A spaying or neutering deposit may be either of the following:

(1) A portion of the adoption fee or other fees rendered in acquiring the dog, which will enable the adopter to take the dog for spaying or neutering to a veterinarian with whom the public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group has an agreement that provides that the veterinarian will bill the shelter directly for the sterilization.

(2) A deposit that is both of the following:

(A) Refundable to the recipient if proof of spaying or neutering of the dog is presented to the public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group not more than 30 business days after the date the dog is spayed or neutered.

(B) Forfeited to the public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group if proof of spaying or neutering is not presented to the animal shelter within 30 business days.

(b) A spaying or neutering deposit shall be in the amount determined by the shelter, but shall not be less than forty dollars ($40) and shall not exceed seventy-five dollars ($75).

(c) All spaying or neutering deposits forfeited or unclaimed under this section shall be retained by the public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group and shall be used by the public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group only for the following purposes:

(1) A program to spay or neuter dogs and cats.

(2) A public education program to reduce and prevent overpopulation of dogs and cats, and the related costs to local government.

(3) A followup program to ensure that dogs and cats transferred by the public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group are spayed or neutered in accordance with the agreement executed under subdivision (d) of Section 30520.

(4) Any additional costs incurred by the public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group in the administration of the requirements of this chapter.

30522. (a) (1) If a recipient fails to comply with the spaying or neutering agreement within 30 business days after the agreement is signed, the recipient shall forfeit the sterilization deposit and is subject to a fine pursuant to Section 30523.

(2) An animal control officer, humane officer, police officer, peace officer, or any agency authorized to enforce the Penal Code may write citations with a civil penalty stated in an amount corresponding to the violation as provided in Section 30523. The fines shall be paid to the local municipality or public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane shelter, or rescue group. Any funds collected under this section shall be expended for the purpose of humane education, programs for low-cost spaying and neutering of dogs and cats, and any additional costs incurred by the animal shelter in the administration of the requirements of this chapter.

(3) If the owner, at any time subsequent to 30 business days after the spaying or neutering agreement was signed, provides proof of spaying or neutering, the deposit shall be forfeited, but any fine levied but not yet paid, shall be waived.

(b) A public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group may extend the date by which spaying or neutering is to be completed at its discretion for good cause shown. Any extension shall be in writing.

(c) If a veterinarian licensed to practice veterinary medicine in this state certifies that a dog is too sick or injured to be spayed or neutered, or that it would otherwise be detrimental to the health of the dog to be spayed or neutered, the adopter or purchaser shall pay the public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group a deposit of not less than forty dollars ($40), and not more than seventy-five dollars ($75). The entity shall establish the amount of the deposit at the level it determines is necessary to encourage the spaying or neutering of dogs. The deposit shall be temporary, and shall be retained only until the dog is healthy enough to be spayed or neutered as certified by a veterinarian licensed to practice veterinary medicine in this state. The dog shall be spayed or neutered within 14 business days of that certification. The adopter or purchaser shall obtain written proof of spaying or neutering from the veterinarian performing the operation. If the adopter or purchaser presents proof of spaying or neutering to the entity from which the dog was obtained within 30 business days, the adopter or purchaser shall receive a full refund of the deposit.

(d) If an adopted dog dies within the spaying or neutering period provided for in the written agreement pursuant to Section 30520, subdivision (c) shall not apply to the dog. In that case, the recipient may receive a reimbursement of the sterilization deposit by submitting to the public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group within the sterilization period a signed letter from a veterinarian licensed to practice medicine in this state stating that the animal has died. The letter shall include a description of the dog.

30523. (a) (1) A person who commits any violation of subdivision (b) is subject to a civil penalty of not less than fifty dollars ($50) on a first violation of subdivision (b), and a civil penalty of not less than one hundred dollars ($100) on any second or subsequent violation of subdivision (b).

(2) An action for a penalty proposed under this section may be commenced by the administrator of the public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group from which the recipient obtained the animal that is the subject of the violation in a court of competent jurisdiction.

(b) A person is subject to the civil penalties pursuant to subdivision (a) if that person does any of the following:

(1) Falsifies any proof of spaying or neutering submitted for the purpose of compliance with this chapter.

(2) Provides to a public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group or a licensed veterinarian inaccurate information regarding ownership of any dog required to be submitted for spaying or neutering under this chapter.

(3) Submits to a public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group false information regarding sterilization fees or fee schedules.

(4) Issues a check for insufficient funds for any spaying or neutering deposit required under this chapter.

(c) All penalties collected under this section shall be retained by the public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group imposing the penalties, to be used solely for purposes provided for under subdivision (c) of Section 30521.

30524. Local ordinances concerning the adoption or placement procedures of any public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group shall be at least as restrictive as this chapter.

30525. Whenever a dog license tag is issued pursuant to this division, the tag shall be issued for one-half or less of the fee required for a dog, if a certificate is presented from a licensed veterinarian that the dog has been spayed or neutered.

30526. This chapter shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2006, deletes or extends that date.

SEC. 4. Section 30804.7 is added to the Food and Agricultural Code, to read:

30804.7. (a) The owner of a nonspayed or unneutered dog that is impounded once by a city or county animal control agency or shelter, society for the prevention of cruelty to animals, or humane society, shall be fined thirty-five dollars ($35) on the first occurrence, fifty dollars ($50) on the second occurrence, and one hundred dollars ($100) for the third or subsequent occurrence. These fines are for unneutered impounded animals only, and are not in lieu of any fines or impound fees imposed by any individual city, county, public animal control agency or shelter, society for the prevention of cruelty to animals shelter, or humane society shelter.

(b) An animal control officer, humane officer, police officer, peace officer, or any agency authorized to enforce the Penal Code may write citations with a civil penalty stated in an amount corresponding to the violation as provided in subdivision (a). The fines shall be paid to the local municipality or public animal control

agency or shelter, society for the prevention of cruelty to animals shelter, or humane society shelter. Any funds collected under this section shall be expended for the purpose of humane education, programs for low cost spaying and neutering of dogs, and any additional costs incurred by the public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group in the administration of the requirements of this division.

(c) This section applies to each county and cities within each county, regardless of population.

(d) No city or county, society for the prevention of cruelty to animals, or humane society is subject to any civil action by the owner of a dog that is spayed or neutered in accordance with this section.

(e) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2006, deletes or extends that date.

SEC. 5. A chapter heading is added immediately preceding Section 31751 of the Food and Agricultural Code, to read:

CHAPTER 1. REGULATION OF CATS GENERALLY

SEC. 6. Section 31751 of the Food and Agricultural Code is amended and renumbered to read:

31751.3. (a) Except as otherwise provided in subdivision (b), no public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group shall sell or give away to a new owner any cat that has not been spayed or neutered.

For the purposes of this section, a rescue group is a for profit or not for profit entity, or a collaboration of individuals with at least one of its purposes being the sale or placement of cats that have been removed from a public animal control agency or shelter, society for the prevention of cruelty to animals shelter, or humane shelter or that have been previously owned by any person other than the original breeder of that cat.

(b) If a veterinarian licensed to practice veterinary medicine in this state certifies that a cat is too sick or injured to be spayed or neutered, or that it would otherwise be detrimental to the health of the cat to be spayed or neutered, the adopter or purchaser shall pay the public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group a deposit of not less than forty dollars ($40), and not more than seventy-five dollars ($75). The entity shall establish the amount of the deposit at the level it determines is necessary to encourage the spaying or neutering of cats. The deposit shall be temporary, and shall only be retained until the cat is healthy enough to be spayed or neutered, as certified by a veterinarian licensed to practice veterinary medicine in this state. The cat shall be spayed or

neutered within 14 business days of that certification. The adopter or purchaser shall obtain written proof of spaying or neutering from the veterinarian performing the operation. If the adopter or purchaser presents proof of spaying or neutering to the entity from which the cat was obtained within 30 business days of obtaining the proof, the adopter or purchaser shall receive a full refund of the deposit.

(c) Public animal control agencies or shelters, society for the prevention of cruelty to animals shelters, humane society shelters, and rescue groups may enter into cooperative agreements with each other and with veterinarians in lieu of requiring spaying and neutering deposits to carry out this section.

(d) Any funds from unclaimed deposits made pursuant to this section, as it read on January 1, 1999, and any funds from deposits unclaimed after January 1, 2000, may be expended only for programs to spay or neuter cats and dogs, including agreements with a society for the prevention of cruelty to animals or a humane society or licensed veterinarian, to operate a program to spay or neuter cats and dogs.

(e) This section only applies to a county that has a population exceeding 100,000 persons as of January 1, 2000, and to cities within that county.

(f) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2006, deletes or extends that date.

SEC. 6.3. Section 31751.3 is added to the Food and Agricultural Code, to read:

31751.3. (a) No public pound, society for the prevention of cruelty to animals shelter, or humane shelter shall sell or give away any cat that has not been spayed or neutered, unless a deposit for spaying or neutering the cat has been tendered to the pound or shelter. The deposit shall be in the amount determined by the pound or shelter to be comparable to the lowest fee charged by veterinarians in the locale, but shall not exceed thirty dollars ($30). A veterinarian shall perform the operation. If a female cat and her kittens are sold or given away to one individual, only a single deposit shall be required. The pound or shelter may make appropriate arrangements for the spaying or neutering of the cat, or may return the deposit to the person purchasing or receiving the cat upon presentation of a written statement or receipt from the veterinarian or clinic that the cat has been spayed or neutered. The deposit may also include the amount necessary to recover any additional costs under this section.

(b) All cats over six months of age at the time they are sold or given away by the pound or shelter shall be spayed or neutered within 60 days, or the deposit shall be deemed unclaimed. All cats six months of age or younger at the time they are sold or given away by the pound or shelter shall be spayed or neutered within six months, or the deposit shall be deemed unclaimed.

(c) Any deposits not claimed under subdivision (a) shall be used only for the following purposes:

(1) A public education program to prevent overpopulation of cats and dogs.

(2) A program to spay or neuter cats and dogs.

(3) A followup program to assure that animals sold or given away by the pound or shelter are spayed or neutered.

(4) Any additional costs incurred under this section.

(d) Public pounds, society for the prevention of cruelty to animals shelters, and humane shelters may enter into cooperative agreements with each other and with veterinarians in carrying out this section.

(e) This section shall become operative on January 1, 2006.

SEC. 6.5. Section 31751 is added to the Food and Agricultural Code, to read:

31751. (a) For the purposes of this division, each member of a litter of kittens, weaned or unweaned, shall be treated as an individual animal.

(b) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2006, deletes or extends that date.

SEC. 7. Section 31751.7 is added to the Food and Agricultural Code, to read:

31751.7. (a) The owner of a nonspayed or unneutered cat that is impounded once by a city or county animal control agency or shelter, society for the prevention of cruelty to animals, or humane society, shall be fined thirty-five dollars ($35) on the first occurrence, fifty dollars ($50) on the second occurrence, and one hundred dollars ($100) for the third or subsequent occurrence. These fines are for unneutered impounded animals only, and are not in lieu of any fines or impound fees imposed by any individual city, county, public animal control agency or shelter, society for the prevention of cruelty to animals shelter, or humane society shelter.

(b) An animal control officer, humane officer, police officer, peace officer, or any agency authorized to enforce the Penal Code may write citations with a civil penalty stated in an amount corresponding to the violation as provided in subdivision (a). The fines shall be paid to the local municipality or public animal control agency or shelter, society for the prevention of cruelty to animals shelter, or humane society shelter. Any funds collected under this section shall be expended for the purpose of humane education, programs for low cost spaying and neutering of cats, and any additional costs incurred by the animal shelter in the administration of the requirements of this division.

(c) Local ordinances concerning the adoption or placement procedures of any public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group shall be at least as restrictive as this division.

(d) This section applies to each county and cities within each county, regardless of population.

(e) No city or county, society for the prevention of cruelty to animals, or humane society is subject to any civil action by the owner of a cat that is spayed or neutered in accordance with this section.

(f) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2006, deletes or extends that date.

SEC. 8. Chapter 2 (commencing with Section 31760) is added to Division 14.5 of the Food and Agricultural Code, to read:

CHAPTER 2. SPECIAL PROVISIONS APPLICABLE TO COUNTIES WITH A POPULATION OF LESS THAN 100,000 PERSONS

31760. (a) This chapter only applies to a county that has a population of less than 100,000 persons as of January 1, 2000, and to cities within that county. A county whose population exceeds 100,000 persons in a year subsequent to January 1, 2000, shall be subject to Chapter 1 (commencing with Section 31751) commencing on January 1 of the year immediately following the year in which the population of that county exceeds 100,000 persons.

(b) Except as otherwise provided in this chapter, no public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group shall sell or give away any cat that has not been spayed or neutered.

(c) A public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group may not transfer to a new owner a cat that has not been spayed or neutered, except as provided in subdivision (d).

(d) A public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group may transfer to a new owner a cat that has not been spayed or neutered only if the public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group does both of the following:

(1) Requires a written agreement, executed by the recipient, acknowledging the cat is not spayed or neutered and the recipient agrees in writing to be responsible for ensuring the cat will be spayed or neutered within 30 business days after the agreement is signed.

(2) Receives from the recipient a sterilization deposit of not less than forty dollars ($40) and not more than seventy-five dollars ($75), the terms of which are part of the written agreement executed by the recipient under this section.

(e) Public animal control agencies or shelters, society for the prevention of cruelty to animals shelters, humane society shelters, and rescue groups may enter into cooperative agreements with each other and with veterinarians in lieu of requiring spaying and neutering deposits to carry out this section.

31761. (a) A spaying or neutering deposit may be either of the following:

(1) A portion of the adoption fee or other fees rendered in acquiring the cat, which will enable the adopter to take the cat for spaying or neutering to a veterinarian with whom the public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group has an agreement that provides that the veterinarian will bill the shelter directly for the sterilization.

(2) A deposit that is both of the following:

(A) Refundable to the recipient if proof of spaying or neutering of the cat is presented to the public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group not more than 30 business days after the date the cat is spayed or neutered.

(B) Forfeited to the public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group if proof of spaying or neutering is not presented to the animal shelter within 30 business days.

(b) Deposits shall be in the amount determined by the shelter, but shall not be less than forty dollars ($40) and shall not exceed seventy-five dollars ($75).

(c) All spaying or neutering deposits forfeited or unclaimed under this section shall be retained by the public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group and shall be used by the public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group only for the following purposes:

(1) A program to spay or neuter dogs and cats.

(2) A public education program to reduce and prevent overpopulation of dogs and cats, and the related costs to local government.

(3) A followup program to ensure that dogs and cats transferred by the public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group are spayed or neutered in accordance with the agreement executed under subdivision (d) of Section 31760.

(4) Any additional costs incurred by the public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group in the administration of the requirements of this chapter.

31762. (a) (1) If a recipient fails to comply with the spaying or neutering agreement within 30 business days after the agreement is signed, the recipient shall forfeit the sterilization deposit and is subject to a fine pursuant to Section 31763.

(2) An animal control officer, humane officer, police officer, peace officer, or any agency authorized to enforce the Penal Code may

write citations with a civil penalty stated in an amount corresponding to the violation as provided in Section 31763. The fines shall be paid to the local municipality or public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group. Any funds collected under this section shall be expended for the purpose of humane education, programs for low cost spaying and neutering of cats and any additional costs incurred by the public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group in the administration of the requirements of this chapter. This subdivision is applicable within any county.

(3) If the owner, at any time subsequent to 30 business days after the spaying or neutering agreement was signed, provides proof of spaying or neutering, the deposit shall be forfeited, but any fine levied but not yet paid, shall be waived.

(b) A public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group may extend the date by which spaying or neutering is to be completed at its discretion for good cause shown. Any extension shall be in writing.

(c) If a veterinarian licensed to practice veterinary medicine in this state certifies that a cat is too sick or injured to be spayed or neutered, or that it would otherwise be detrimental to the health of the cat to be spayed or neutered, the adopter or purchaser shall pay the public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group a deposit of not less than forty dollars ($40), and not more than seventy-five dollars ($75). The entity shall establish the amount of the deposit at the level it determines is necessary to encourage the spaying or neutering of cats. The deposit shall be temporary, and shall be retained only until the cat is healthy enough to be spayed or neutered as certified by a veterinarian licensed to practice veterinary medicine in this state. The cat shall be spayed or neutered within 14 business days of that certification. The adopter or purchaser shall obtain written proof of spaying or neutering from the veterinarian performing the operation. If the adopter or purchaser presents proof of spaying or neutering to the entity from which the cat was obtained within 30 business days, the adopter or purchaser shall receive a full refund of the deposit.

(d) If an adopted cat dies within the spaying or neutering period provided for in the written agreement pursuant to Section 31760, subdivision (c) shall not apply to the cat. In that case, the recipient may receive a reimbursement of the sterilization deposit by submitting to the public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group within the sterilization period a signed letter from

a veterinarian licensed to practice medicine in this state stating that the animal has died. The letter shall include a description of the cat.

31763. (a) (1) A person who commits any violation of subdivision (b) is subject to a civil penalty of not less than fifty dollars ($50) on a first violation of subdivision (b), and a civil penalty of not less than one hundred dollars ($100) on any second or subsequent violation of subdivision (b).

(2) An action for a penalty proposed under this section may be commenced by the administrator of the public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group from which the recipient obtained the animal that is the subject of the violation in a court of competent jurisdiction.

(b) A person is subject to the civil penalties pursuant to subdivision (a) if that person does any of the following:

(1) Falsifies any proof of spaying or neutering submitted for the purpose of compliance with this chapter.

(2) Provides to a public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group or a licensed veterinarian inaccurate information regarding ownership of any cat required to be submitted for spaying or neutering under this chapter.

(3) Submits to a public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group false information regarding sterilization fees or fee schedules.

(4) Issues a check for insufficient funds for any spaying or neutering deposit required under this chapter.

(c) All penalties collected under this section shall be retained by the public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group imposing the penalties, to be used solely for purposes provided for under subdivision (c) of Section 31761.

31764. Local ordinances concerning the adoption or placement procedures of any animal shelter shall be at least as restrictive as this chapter.

31765. Whenever a county, or a city that is within a county to which this chapter applies, requires cat license tags, the tag shall be issued for one-half or less of the fee required for a cat, if a certificate is presented from a licensed veterinarian that the cat has been spayed or neutered.

31766. This chapter shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2006, deletes or extends that date.

SEC. 9. This act shall become operative on January 1, 2000.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service

charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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 Section 217.1 of the Penal Code, relating to sentencing.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. Section 217.1 of the Penal Code is amended to read:

217.1. (a) Except as provided in subdivision (b), every person who commits any assault upon the President or Vice President of the United States, the Governor of any state or territory, any justice, judge, or former judge of any local, state, or federal court of record, the secretary or director of any executive agency or department of the United States or any state or territory, or any other official of the United States or any state or territory holding elective office, any mayor, city council member, county supervisor, sheriff, district attorney, prosecutor or assistant prosecutor of any local, state, or federal prosecutor's office, a former prosecutor or assistant prosecutor of any local, state, or federal prosecutor's office, public defender or assistant public defender of any local, state, or federal public defender's office, a former public defender or assistant public defender of any local, state, or federal public defender's office, the chief of police of any municipal police department, any peace officer, any juror in any local, state, or federal court of record, or the immediate family of any of these officials, in retaliation for or to prevent the performance of the victim's official duties, shall be punished by imprisonment in the county jail not exceeding one year or by imprisonment in the state prison.

(b) Notwithstanding subdivision (a), every person who attempts to commit murder against any person listed in subdivision (a) in retaliation for or to prevent the performance of the victim's official duties, shall be confined in the state prison for a term of 15 years to life. The provisions of Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term of 15 years in a state prison imposed pursuant to this section, but such person shall not otherwise be released on parole prior to such time.

(c) For the purposes of this section, the following words have the following meanings:

(1) "Immediate family" means spouse, child, stepchild, brother, stepbrother, sister, stepsister, mother, stepmother, father, or stepfather.

(2) "Peace officer" means any person specified in subdivision (a) of Section 830.1 or Section 830.5.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 749

An act to amend Sections 17207 and 24347.5 of, and to add Sections 195.80, 195.81, and 195.82 to, the Revenue and Taxation Code, relating to disaster relief, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. Section 195.80 is added to the Revenue and Taxation Code, to read:

195.80. In the 1997–98 fiscal year, the county auditor of an eligible county, proclaimed by the Governor to be in a state of disaster as a result of storm, flooding, or any other related casualty that occurred in that county during February 1998, shall certify to the Director of Finance an estimate of the total amount of the reduction in property tax revenues on both the regular secured roll and the supplemental roll for the 1997–98 fiscal year resulting from the reassessment by the county assessor pursuant to paragraph (1) of subdivision (a) of Section 170 of those properties that are eligible properties as a result of that disaster, except that the amount certified shall not include any estimated property tax revenue reductions to school districts (other than basic state aid school districts) and county offices of education. For purposes of this section, "basic state aid school district" means

any school district that does not receive a state apportionment pursuant to subdivision (h) of Section 42238 of the Education Code, but receives from the state only a basic apportionment pursuant to Section 6 of Article IX of the California Constitution.

SEC. 2. Section 195.81 is added to the Revenue and Taxation Code, to read:

195.81. After the county auditor of an eligible county, as described in Section 195.80, has made the applicable certification to the Director of Finance pursuant to that section, the director shall, within 30 days after verification of the county auditor's estimate, certify this amount to the Controller for allocation to the county. Upon receipt of certification from the Director of Finance, the Controller shall make the appropriate allocation to the county within 10 working days thereafter.

SEC. 3. Section 195.82 is added to the Revenue and Taxation Code, to read:

195.82. On or before June 30, 1999, each eligible county, as described in Section 195.80, shall compute and remit to the Controller for deposit in the General Fund an amount equal to the amount allocated to it by the Controller pursuant to Section 195.81, less the actual amount of its property tax revenue lost on the regular secured and supplemental rolls with respect to those eligible properties described in Section 195.80 as a result of the reassessment of those properties pursuant to paragraph (1) of subdivision (a) of Section 170, excluding any property tax revenue lost by school districts (other than basic state aid school districts) and county offices of education. If the actual amount of property tax revenue lost by an eligible county in the immediately preceding fiscal year, as described and limited in the preceding sentence, exceeds the amount allocated by the Controller to that county pursuant to Section 195.81, the Controller shall allocate the amount of that excess to that eligible county. For purposes of this section, "basic state aid school district" means any school district that does not receive a state apportionment pursuant to subdivision (h) of Section 42238 of the Education Code, but receives from the state only a basic apportionment pursuant to Section 6 of Article IX of the California Constitution.

SEC. 4. Section 17207 of the Revenue and Taxation Code is amended to read:

17207. (a) An excess disaster loss, as defined in subdivision (c), shall be carried to other taxable years as provided in subdivision (b), with respect to losses resulting from any of the following disasters:

(1) Forest fire or any other related casualty occurring in 1985 in California.

(2) Storm, flooding, or any other related casualty occurring in 1986 in California.

(3) Any loss sustained during 1987 as a result of a forest fire or any other related casualty.

(4) Earthquake, aftershock, or any other related casualty occurring in 1987 in California.

(5) Earthquake, aftershock, or any other related casualty occurring in 1989 in California.

(6) Any loss sustained during 1990 as a result of fire or any other related casualty in California.

(7) Any loss sustained as a result of the Oakland/Berkeley Fire of 1991, or any other related casualty.

(8) Any loss sustained as a result of storm, flooding, or any other related casualty occurring in February 1992 in California.

(9) Earthquake, aftershock, or any other related casualty occurring in April 1992 in the County of Humboldt.

(10) Riots, arson, or any other related casualty occurring in April or May 1992 in California.

(11) Any loss sustained as a result of the earthquakes that occurred in the County of San Bernardino in June and July of 1992, or any other related casualty.

(12) Any loss sustained as a result of the Fountain Fire that occurred in the County of Shasta, or as a result of either of the fires in the Counties of Calaveras and Trinity that occurred in August 1992, or any other related casualty.

(13) Any loss sustained as a result of storm, flooding, or any other related casualty that occurred in the Counties of Alpine, Contra Costa, Fresno, Humboldt, Imperial, Lassen, Los Angeles, Madera, Mendocino, Modoc, Monterey, Napa, Orange, Plumas, Riverside, San Bernardino, San Diego, Santa Barbara, Sierra, Siskiyou, Sonoma, Tehama, Trinity, and Tulare, and the City of Fillmore in January 1993.

(14) Any loss sustained as a result of a fire that occurred in the Counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura, during October or November of 1993, or any other related casualty.

(15) Any loss sustained as a result of the earthquake, aftershocks, or any other related casualty that occurred in the Counties of Los Angeles, Orange, and Ventura on or after January 17, 1994.

(16) Any loss sustained as a result of a fire that occurred in the County of San Luis Obispo during August of 1994, or any other related casualty.

(17) Any loss sustained as a result of the storms or flooding occurring in 1995, or any other related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms and flooding.

(18) Any loss sustained as a result of the storms or flooding occurring in December 1996 or January 1997, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(19) Any loss sustained as a result of the storms or flooding occurring in February 1998, or any related casualty, sustained in any

county of this state subject to a disaster declaration with respect to the storms or flooding.

(b) (1) In the case of any loss allowed under Section 165(c) of the Internal Revenue Code, relating to limitation of losses of individuals, any excess disaster loss shall be carried forward to each of the five taxable years following the taxable year for which the loss is claimed. However, if there is any excess disaster loss remaining after the five-year period, then 50 percent of that excess disaster loss shall be carried forward to each of the next 10 taxable years.

(2) The entire amount of any excess disaster loss as defined in subdivision (c) shall be carried to the earliest of the taxable years to which, by reason of subdivision (b), the loss may be carried. The portion of the loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of excess disaster loss over the sum of the adjusted taxable income for each of the prior taxable years to which that excess disaster loss is carried.

(c) "Excess disaster loss" means a disaster loss computed pursuant to Section 165 of the Internal Revenue Code which exceeds the adjusted taxable income of the year of loss or, if the election under Section 165(i) of the Internal Revenue Code is made, the adjusted taxable income of the year preceding the loss.

(d) For purposes of this section, "disaster losses" are losses that either qualified for treatment under Section 165(i) of the Internal Revenue Code or were sustained in any county or city in this state which is proclaimed by the Governor to be in a state of disaster.

(e) Losses allowable under this section may not be taken into account in computing a net operating loss deduction under Section 172 of the Internal Revenue Code.

(f) For purposes of this section, "adjusted taxable income" shall be defined by Section 1212(b)(2)(B) of the Internal Revenue Code.

(g) For losses described in paragraphs (15), (16), (17), (18), and (19) of subdivision (a), the election under Section 165(i) of the Internal Revenue Code may be made on a return or amended return filed on or before the due date of the return (determined with regard to extension) for the taxable year in which the disaster occurred.

SEC. 5. Section 24347.5 of the Revenue and Taxation Code is amended to read:

24347.5. (a) An excess disaster loss, as defined in subdivision (c), shall be carried to other income years as provided in subdivision (b), with respect to losses resulting from any of the following disasters:

(1) Forest fire or any other related casualty occurring in 1985 in California.

(2) Storm, flooding, or any other related casualty occurring in 1986 in California.

(3) Any loss sustained during 1987 as a result of a forest fire or any other related casualty.

(4) Earthquake, aftershock, or any other related casualty occurring in October 1987 in California.

(5) Earthquake, aftershock, or any other related casualty occurring in October 1989 in California.

(6) Any loss sustained during 1990 as a result of fire or any other related casualty in California.

(7) Any loss sustained as a result of the Oakland/Berkeley Fire of 1991, or any other related casualty.

(8) Any loss sustained as a result of storm, flooding, or any other related casualty occurring in February 1992 in California.

(9) Earthquake, aftershock, or any other related casualty occurring in April 1992 in the County of Humboldt.

(10) Riots, arson, or any other related casualty occurring in April or May 1992 in California.

(11) Any loss sustained as a result of the earthquakes or any other related casualty that occurred in the County of San Bernardino in June and July of 1992.

(12) Any loss sustained as a result of the Fountain Fire that occurred in the County of Shasta, or as a result of either of the fires in the Counties of Calaveras and Trinity that occurred in August 1992, or any other related casualty.

(13) Any loss sustained as a result of storm, flooding, or any other related casualty that occurred in the Counties of Alpine, Contra Costa, Fresno, Humboldt, Imperial, Lassen, Los Angeles, Madera, Mendocino, Modoc, Monterey, Napa, Orange, Plumas, Riverside, San Bernardino, San Diego, Santa Barbara, Sierra, Siskiyou, Sonoma, Tehama, Trinity, and Tulare, and the City of Fillmore in January 1993.

(14) Any loss sustained as a result of a fire that occurred in the Counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura, during October or November of 1993, or any other related casualty.

(15) Any loss sustained as a result of the earthquake, aftershocks, or any other related casualty that occurred in the Counties of Los Angeles, Orange, and Ventura on or after January 17, 1994.

(16) Any loss sustained as a result of a fire that occurred in the County of San Luis Obispo during August of 1994, or any other related casualty.

(17) Any loss sustained as a result of the storms or flooding occurring in 1995, or any other related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms and flooding.

(18) Any loss sustained as a result of the storms or flooding occurring in December 1996 or January 1997, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(19) Any loss sustained as a result of the storms or flooding occurring in February 1998, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(b) (1) In the case of any loss allowed under Section 165 of the Internal Revenue Code, relating to losses, any excess disaster loss shall be carried forward to each of the five income years following the income year for which the loss is claimed. However, if there is any excess disaster loss remaining after the five-year period, then 50 percent of that excess disaster loss shall be carried forward to each of the next 10 income years.

(2) The entire amount of any excess disaster loss as defined in subdivision (c) shall be carried to the earliest of the income years to which, by reason of subdivision (b), the loss may be carried. The portion of the loss which shall be carried to each of the other income years shall be the excess, if any, of the amount of excess disaster loss over the sum of the net income for each of the prior income years to which that excess disaster loss is carried.

(c) "Excess disaster loss" means a disaster loss computed pursuant to Section 165 of the Internal Revenue Code, which exceeds the net income of the year of loss or, if the election under Section 165(i) of the Internal Revenue Code is made, the net income of the year preceding the loss.

(d) For purposes of this section, "disaster losses" are losses that either qualified for treatment under Section 165(i) of the Internal Revenue Code, or were sustained in any county or city in this state which is proclaimed by the Governor to be in a state of disaster.

(e) Any corporation subject to the provisions of Section 25101 or 25101.15 that has disaster losses pursuant to this section, shall determine the excess disaster loss to be carried to other income years under the principles specified in Section 25108 relating to net operating losses.

(f) Losses allowable under this section may not be taken into account in computing a net operating loss deduction under Section 172 of the Internal Revenue Code.

(g) For losses described in paragraphs (15), (16), (17), (18), and (19) of subdivision (a), the election under Section 165(i) of the Internal Revenue Code may be made on a return or amended return filed on or before the due date of the return (determined with regard to extension) for the income year in which the disaster occurred.

SEC. 6. The Legislature finds and declares that this act fulfills a statewide public purpose because of both of the following:

(a) The Governor of California has officially proclaimed that the flooding that occurred in California during February 1998 was a disaster, thus qualifying affected persons for various forms of governmental assistance and relief.

(b) This act is consistent with and supplements the proclaimed disaster relief by providing necessary fiscal assistance and tax relief to affected jurisdictions and persons to allow them to maintain essential basic services and repair damage to, and restore, their homes and businesses.

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

In order to timely provide essential relief to those persons and jurisdictions who have suffered damage or loss as a result of the storms or flooding that occurred in California during February 1998, it is necessary that this act take effect immediately.

CHAPTER 750

An act to add Section 11352.1 to, and to add and repeal Section 101070 of, the Health and Safety Code, relating to healing arts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. Section 11352.1 is added to the Health and Safety Code, to read:

11352.1. (a) The Legislature hereby declares that the dispensing and furnishing of prescription drugs, controlled substances, and dangerous drugs or dangerous devices without a license poses a significant threat to the health, safety, and welfare of all persons residing in the state. It is the intent of the Legislature in enacting this provision to enhance the penalties attached to this illicit and dangerous conduct.

(b) Notwithstanding Section 4321 of the Business and Professions Code, and in addition to any other penalties provided by law, any person who knowingly and unlawfully dispenses or furnishes a dangerous drug or dangerous device, as defined in Section 4022 of the Business and Professions Code, or who knowingly owns, manages, or operates a business that dispenses or furnishes a dangerous drug or dangerous device as defined in Section 4022 of the Business and Professions Code without a license to dispense or furnish these products, shall be guilty of a misdemeanor. Upon the first conviction, each violation shall be punishable by imprisonment in a county jail not to exceed one year, or by a fine not to exceed five thousand dollars ($5,000), or by both that fine and imprisonment. Upon a second or subsequent conviction, each violation shall be punishable by imprisonment in a county jail not to exceed one year, or by a fine not to exceed ten thousand dollars ($10,000), or by both that fine and imprisonment.

SEC. 2. Section 101070 is added to the Health and Safety Code, to read:

101070. (a) (1) The Legislature hereby finds and declares that the dispensing or furnishing of drugs requiring a prescription pursuant to Section 11470, a controlled substance as defined in Section 4021 of the Business and Professions Code, or a dangerous drug or a dangerous device as defined in Section 4022 of the Business and Professions Code, without a license poses a significant threat to the public health, safety, and welfare of all residents of the state. In recent years, the public has become increasingly exposed to a proliferation of persons who engage in these illegal or dangerous acts.

(2) The Legislature further finds and declares that extraordinary measures are needed to control this burgeoning problem. Therefore, the occasional enlistment of local health officers in regulatory and enforcement functions normally reserved to the state is appropriate and necessary in order to protect the health, safety, and welfare of all persons of this state.

(3) Notwithstanding the foregoing, nothing contained in this section shall be construed as limiting or supplanting the authority of the state agencies charged with the regulation of the practice of pharmacy.

(b) Whenever a local health officer determines that there exists in his or her jurisdiction any person who, without a license, is dispensing or furnishing drugs requiring a prescription pursuant to Section 111470, a controlled substance as defined in Section 4021 of the Business and Professions Code, or a dangerous drug or a dangerous device as defined in Section 4022 of the Business and Professions Code, the local health officer may take action against such person. This action shall include, but not be limited to:

(1) Receiving and investigating complaints from the public, from other licensees or from health care facilities that a person is engaging in any or all of the activity set forth in this subdivision. In conducting any investigation pursuant to this paragraph, the local health officer shall have the assistance of, and be accompanied by, a licensed pharmacist. The local health officer shall provide the Board of Pharmacy, and any other state agency charged with jurisdiction over the activity set forth in this subdivision, with a copy of all complaints received pursuant to this paragraph.

(2) Issuing an order to the person to immediately cease and desist from the unlawful activity described in this subdivision, after confirming that the person is engaging in any or all of the activity set forth in this subdivision, and determining that the person has not been convicted of engaging in that activity pursuant to Section 11352.1 or any other applicable provision of law. In issuing the order, the local health officer shall notify the person that the activity is illegal in the State of California. In the event the local health officer determines that any or all of the items described in this subdivision must be confiscated, in addition to the cease and desist order, the local health officer shall enlist the aid of local law enforcement to execute confiscation of those items.

(3) Order the closure of the business, if any, operated, managed, or owned by the person after confirming that the person is engaging in any or all of the activity set forth in this subdivision, and determining whether the person has previously been convicted of engaging in that activity pursuant to Section 11352.1 or any other applicable provision of law. If the public health officer has a reasonable suspicion that the operation of a business poses an immediate threat to public health, welfare, or safety, the business may be ordered closed immediately while the hearing described in subdivision (c) is pending. Immediate danger to the public health, welfare, or safety includes, but is not limited to, evidence that the person is providing, selling, or distributing drugs that require a prescription, or dangerous drugs, devices, or controlled substances without a license. In the event that the local health officer determines that any or all of the items described in this subdivision must be confiscated in addition to the closure of the business, that officer shall enlist the aid of local law enforcement to execute the confiscation of those items.

(c) (1) Any person engaging in any or all of the activity described in subdivision (b) whose business is closed as a result of action by local health officer pursuant to subdivision (b) shall be entitled to a hearing to show cause why the closure was unwarranted.

(2) Whenever a local health officer orders the closure of a business pursuant to subdivision (b), the local health officer shall immediately issue to the owner a notice setting forth the acts or omissions with which the owner is charged, specifying the pertinent code section, and informing the owner of the right to a hearing, if requested, to show cause why the business should not be closed.

(3) A written request for a hearing shall be submitted by the person to the local health officer within 15 calendar days of closure. A failure to request a hearing within 15 calendar days of closure shall be deemed a waiver of the right to a hearing.

(4) The hearing shall be held within 15 calendar days of the receipt of a request for a hearing; however, when circumstances warrant, the hearing officer may order a hearing at any reasonable time within this 15-day period to expedite the hearing process. Upon written request of the person, the hearing officer may postpone any hearing date, if circumstances warrant the postponement.

(5) The hearing officer shall issue a written notice of decision to the person within five working days following the hearing. In the event the hearing officer determines that the closure was warranted, the notice shall specify the acts or omissions with which the person is charged, and shall state that the business shall remain closed permanently. Evidence that the person engaged in any or all of the activity set forth in subdivision (b) shall constitute prima facie evidence that permanent closure is warranted. Any business still operating shall close immediately upon receipt of the written decision ordering closure.

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

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

SEC. 4. This act 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 safeguard the health and welfare of the people of this state by providing for increased regulatory and enforcement activities relating to the unauthorized practice of pharmacy at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 751

An act to add Section 13207 to, and to repeal Chapter 12 (commencing with Section 13200) of Division 5 of, the Business and Professions Code, and to amend Sections 597v and 597y of, to amend and repeal Section 597z of, and to amend, repeal, and add Section 597u of, the Penal Code, relating to animal euthanasia.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. It is the intent of the Legislature that the State Veterinary Medical Board shall consider the needs of small and rural counties when developing any regulations necessary to implement this act.

SEC. 2. Section 13207 is added to the Business and Professions Code, to read:

13207. This chapter shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2000, deletes or extends that date.

SEC. 3. Section 597u of the Penal Code is amended to read:

597u. No person, peace officer, officer of a humane society, or officer of a pound or animal regulation department of a public agency shall kill any dog or cat by the use of carbon monoxide gas unless all of the following are satisfied:

(a) The carbon monoxide gas chamber is equipped with internal lighting and viewport providing direct visual surveillance of the collapse and death of any dog or cat within the chamber.

(b) The gas generation process is adequate to achieve a carbon monoxide gas concentration throughout the chamber of at least 5 percent within 20 minutes after any dog or cat is placed in the chamber.

(c) If chemical generation through the use of sodium formate and sulfuric acid is used, the generated carbon monoxide gas has the irritating acid vapors filtered out by passing it through a 10 percent solution of sodium hydroxide prior to its entry into the carbon monoxide gas chamber.

(d) If carbon monoxide gas generation is by combustion of gasoline in an engine, all of the following shall be satisfied:

(1) The engine is maintained in good operating condition.

(2) The engine is operated only at idling speed with the richest fuel-air mixture the choke permits.

(3) Prior to entry into the chamber, the exhaust gas is cooled so that it does not exceed 125° Fahrenheit.

(4) The chamber is equipped with accurate temperature gauges monitored by attendants to assure that internal temperature of the chamber does not exceed 110° Fahrenheit.

(5) Prior to its entry into the lethal chamber the exhaust gas is first passed through an adequate water filtration process and subsequently through a cloth filtration process to remove irritants and carbon particles.

(6) The noise level from the engine shall not exceed 70 dBA when measured within the chamber.

(7) A flexible tubing or pipe at least 24 inches in length shall be placed between the chamber and the engine to minimize vibrations.

(e) Any dog or cat not covered by Section 597v is placed in an individual container or compartment of the carbon monoxide chamber, except dogs or cats from the same litter and their parents may be placed in the same container or compartment.

(f) The carbon monoxide gas chamber and its compartments shall be cleaned thoroughly after every cycle of operation.

(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 597u is added to the Penal Code, to read:

597u. (a) No person, peace officer, officer of a humane society, or officer of a pound or animal regulation department of a public agency shall kill any animal by the use of carbon monoxide gas.

(b) This section shall become operative on January 1, 2000.

SEC. 5. Section 597v of the Penal Code is amended to read:

597v. No person, peace officer, officer of a humane society, or officer of a pound or animal regulation department of a public agency shall kill any newborn dog or cat whose eyes have not yet opened by any other method than by the use of chloroform vapor or by inoculation of barbiturates.

SEC. 6. Section 597y of the Penal Code is amended to read:

597y. A violation of Section 597u, 597v, or 597w is a misdemeanor.

SEC. 7. Section 597z of the Penal Code is amended to read:

597z. (a) 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 the facility to determine whether there is compliance with Section 597u.

(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. 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 752

An act to amend Sections 1815, 1816, 1834, 1845, 1846, 1847, and 2080 of, and to add Section 1834.4 to, the Civil Code, to amend Sections 31108, 31752, and 32001 of, to add Sections 17005, 17006, 31752.5, 31753, and 32003 to, and to add, repeal, and add Section 31754 of, the Food and Agricultural Code, and to amend Section 597.1 of, and to add Section 599d to, the Penal Code, relating to stray animals.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. (a) The Legislature finds and declares the following:

(1) Public and private shelters and humane organizations share a common purpose in saving animals' lives, preventing animal suffering, and eliminating animal abandonment.

(2) Public and private shelters and humane groups should work together to end euthanasia of adoptable and treatable animals by 2010.

(b) The Legislature finds and declares the following:

(1) Redemption of owned pets and adoption of lost or stray adoptable animals is preferable to incurring social and economic costs of euthanasia.

(2) Shelters should be open during hours that permit working pet owners to redeem pets during nonworking hours.

(3) Shelters should aggressively promote spay and neuter programs to reduce pet overpopulation.

(4) Shelters should not adopt out animals that are not spayed or neutered.

(5) Public shelters should work with humane animal adoption organizations to the fullest extent possible to promote the adoption of animals and to reduce the rate of killing.

(c) The intent of this act is to do all of the following:

(1) Increase the focus of shelters to owner redemption and adoption by making recordkeeping mandatory to aid in owner redemption, providing owner relinquished pets the same holding period as stray animals to allow for adoption, and providing for an explicit adoption period.

(2) Consolidate and list clear guidelines for care and treatment for animals held in shelters.

(3) Extend public shelter responsibilities from dogs and cats to other legal pets.

(4) Make shelters accountable to pet owners and the public for records and the care of animals in their possession.

(5) Make clear that shelter responsibilities are the same as those legally assumed by a person who voluntarily picks up an animal.

(d) The Legislature finds and declares that statutory law prescribes the type of treatment that private citizens must extend to stray animals they voluntarily pick up and that public and private animal shelters should be held to the same legal duties as those that exist for private citizens.

(e) The Legislature finds and declares that it is better to have public and private shelters pick up or take in animals than private citizens. The Legislature further finds that the taking in of animals is important for public health and safety, to aid in the return of the animal to its owner, and to prevent inhumane conditions for lost or free roaming animals.

(f) The Legislature finds and declares that shelters should be required by law to take in lost animals and properly care for them with prompt veterinary care, adequate nutrition, shelter, exercise, and water.

(g) The Legislature finds and declares that shelters receiving animals that have identification should make reasonable attempts to notify the owner of the animal's location.

(h) The Legislature finds and declares that the duties of shelters to properly care for an animal do not cease if the owner of a lost animal does not claim the animal, and the shelter should have the duty to make the animal available for adoption for a reasonable period of time and to care properly for the animal during this period.

(i) The Legislature finds and declares that lost animals should be held for a period of time to ensure that the owner has proper access to redeem the animal.

SEC. 2. Section 1815 of the Civil Code is amended to read:

1815. An involuntary deposit is made:

(a) By the accidental leaving or placing of personal property in the possession of any person, without negligence on the part of its owner.

(b) In cases of fire, shipwreck, inundation, insurrection, riot, or like extraordinary emergencies, by the owner of personal property committing it, out of necessity, to the care of any person.

(c) By the delivery to, or pick up by, and the holding of, a stray live animal by any person, or public or private entity.

SEC. 3. Section 1816 of the Civil Code is amended to read:

1816. (a) The person or private entity with whom a thing is deposited in the manner described in Section 1815 is bound to take charge of it, if able to do so.

(b) A public agency or shelter with whom a thing is deposited in the manner described in Section 1815 is bound to take charge of it, as provided in Section 597.1 of the Penal Code.

SEC. 4. Section 1834 of the Civil Code is amended to read:

1834. A depositary of living animals shall provide the animals with necessary and prompt veterinary care, nutrition, and shelter, and treat them kindly. Any depositary that fails to perform these duties may be liable for civil damages as provided by law.

SEC. 5. Section 1834.4 is added to the Civil Code, to read:

1834.4. (a) It is the policy of the state that no adoptable animal should be euthanized if it can be adopted into a suitable home. Adoptable animals include only those animals eight weeks of age or older that, at or subsequent to the time the animal is impounded or otherwise taken into possession, have manifested no sign of a behavioral or temperamental defect that could pose a health or safety risk or otherwise make the animal unsuitable for placement as a pet, and have manifested no sign of disease, injury, or congenital or hereditary condition that adversely affects the health of the animal or that is likely to adversely affect the animal's health in the future.

(b) It is the policy of the state that no treatable animal should be euthanized. A treatable animal shall include any animal that is not adoptable but that could become adoptable with reasonable efforts.

This subdivision, by itself, shall not be the basis of liability for damages regarding euthanasia.

SEC. 6. Section 1845 of the Civil Code is amended to read:

1845. An involuntary deposit is gratuitous, the depositary being entitled to no reward. However, an involuntary depositary of any live animal may accept advertised rewards or rewards freely offered by the owner of the animal.

SEC. 7. Section 1846 of the Civil Code is amended to read:

1846. (a) A gratuitous depositary must use, at least, slight care for the preservation of the thing deposited.

(b) A gratuitous depositary of a living animal shall provide the animal with necessary and prompt veterinary care, adequate nutrition and water, and shelter, and shall treat it humanely and, if the animal has any identification, make reasonable attempts to notify the owner of the animal's location. Any gratuitous depositary that does not have sufficient resources or desire to provide that care shall promptly turn the animal over to an appropriate care facility.

(c) If the gratuitous depositary of a living animal is a public pound, shelter operated by a society for the prevention of cruelty to animals, or humane shelter, the depositary shall comply with all other requirements of the Food and Agricultural Code regarding the impounding of live animals.

SEC. 8. Section 1847 of the Civil Code is amended to read:

1847. The duties of a gratuitous depositary cease:

(a) Upon restoration by the depositary of the thing deposited to its owner.

(b) Upon reasonable notice given by the depositary to the owner to remove it, and the owner failing to do so within a reasonable time. But an involuntary depositary, under subdivision (b) of Section 1815, may not give notice until the emergency that gave rise to the deposit is past. This subdivision shall not apply to a public pound, a shelter operated by a society for the prevention of cruelty to animals, or a humane shelter. The duty to provide care, as required by Section 1846, continues until the public pound or private shelter is lawfully relieved of responsibility for the animal.

SEC. 9. Section 2080 of the Civil Code is amended to read:

2080. Any person who finds a thing lost is not bound to take charge of it, unless the person is otherwise required to do so by contract or law, but when the person does take charge of it he or she is thenceforward a depositary for the owner, with the rights and obligations of a depositary for hire. Any person or any public or private entity that finds and takes possession of any money, goods, things in action, or other personal property, or saves any domestic animal from harm, neglect, drowning, or starvation, shall, within a reasonable time, inform the owner, if known, and make restitution without compensation, except a reasonable charge for saving and taking care of the property. Any person who takes possession of a live domestic animal shall provide for humane treatment of the animal.

SEC. 10. Section 17005 is added to the Food and Agricultural Code, to read:

17005. (a) It is the policy of the state that no adoptable animal should be euthanized if it can be adopted into a suitable home. Adoptable animals include only those animals eight weeks of age or older that, at or subsequent to the time the animal is impounded or otherwise taken into possession, have manifested no sign of a behavioral or temperamental defect that could pose a health or safety risk or otherwise make the animal unsuitable for placement as a pet, and have manifested no sign of disease, injury, or congenital or hereditary condition that adversely affects the health of the animal or that is likely to adversely affect the animal's health in the future.

(b) It is the policy of the state that no treatable animal should be euthanized. A treatable animal shall include any animal that is not adoptable but that could become adoptable with reasonable efforts. This subdivision, by itself, shall not be the basis of liability for damages regarding euthanasia.

SEC. 11. Section 17006 is added to the Food and Agricultural Code, to read:

17006. Animals that are irremediably suffering from a serious illness or severe injury shall not be held for owner redemption or adoption. Newborn animals that need maternal care and have been impounded without their mothers may be euthanized without being held for owner redemption or adoption.

SEC. 12. Section 31108 of the Food and Agricultural Code is amended to read:

31108. (a) The required holding period for a stray dog impounded pursuant to this division shall be six business days, not including the day of impoundment, except as follows:

(1) If the pound or shelter has made the dog available for owner redemption on one weekday evening until at least 7:00 p.m. or one weekend day, the holding period shall be four business days, not including the day of impoundment.

(2) If the pound or shelter has fewer than three full-time employees or is not open during all regular weekday business hours, and if it has established a procedure to enable owners to reclaim their dogs by appointment at a mutually agreeable time when the pound or shelter would otherwise be closed, the holding period shall be four business days, not including the day of impoundment.

Except as provided in Section 17006, stray dogs shall be held for owner redemption during the first three days of the holding period, not including the day of impoundment, and shall be available for owner redemption or adoption for the remainder of the holding period.

(b) Any stray dog that is impounded pursuant to this division shall, prior to the killing of that animal for any reason other than irremediable suffering, be released to a nonprofit, as defined in Section 501(c)(3) of the Internal Revenue Code, animal rescue or

adoption organization if requested by the organization prior to the scheduled killing of that animal. In addition to any required spay or neuter deposit, the pound or shelter, at its discretion, may assess a fee, not to exceed the standard adoption fee, for animals released.

SEC. 13. Section 31752 of the Food and Agricultural Code is amended to read:

31752. (a) The required holding period for a stray cat impounded pursuant to this division shall be six business days, not including the day of impoundment, except as follows:

(1) If the pound or shelter has made the cat available for owner redemption on one weekday evening until at least 7:00 p.m. or one weekend day, the holding period shall be four business days, not including the day of impoundment.

(2) If the pound or shelter has fewer than three full-time employees or is not open during all regular weekday business hours, and if it has established a procedure to enable owners to reclaim their cats by appointment at a mutually agreeable time when the pound or shelter would otherwise be closed, the holding period shall be four business days, not including the day of impoundment.

Except as provided in Sections 17006 and 31752.5, stray cats shall be held for owner redemption during the first three days of the holding period, not including the day of impoundment, and shall be available for owner redemption or adoption for the remainder of the holding period.

(b) Any stray cat that is impounded pursuant to this division shall, prior to the killing of that animal for any reason other than irremediable suffering, be released to a nonprofit, as defined in Section 501(c)(3) of the Internal Revenue Code, animal rescue or adoption organization if requested by the organization prior to the scheduled killing of that animal. In addition to any required spay or neuter deposit, the pound or shelter, at its discretion, may assess a fee, not to exceed the standard adoption fee, for animals released.

SEC. 14. Section 31752.5 is added to the Food and Agricultural Code, to read:

31752.5. (a) The Legislature finds and declares the following:

(1) Domestic cats' temperaments range from completely docile indoor pets to completely unsocialized outdoor cats that avoid all contact with humans.

(2) "Feral cats" are cats with temperaments that are completely unsocialized, although frightened or injured tame pet cats may appear to be feral.

(3) Some people care for or own feral cats.

(4) Feral cats pose particular safety hazards for shelter employees.

(5) It is cruel to keep feral cats caged for long periods of time; however, it is not always easy to distinguish a feral cat from a frightened tame cat.

(b) For the purposes of this section, a "feral cat" is defined as a cat without owner identification of any kind whose usual and consistent

temperament is extreme fear and resistance to contact with people. A feral cat is totally unsocialized to people.

(c) Notwithstanding Section 31752, if an apparently feral cat has not been reclaimed by its owner or caretaker within the first three days of the required holding period, shelter personnel qualified to verify the temperament of the animal shall verify whether it is feral or tame by using a standardized protocol. If the cat is determined to be docile or a frightened or difficult tame cat, the cat shall be held for the entire required holding period specified in Section 31752. If the cat is determined to be truly feral, the cat may be euthanized or relinquished to a nonprofit, as defined in Section 501(c)(3) of the Internal Revenue Code, animal adoption organization that agrees to the spaying or neutering of the cat if it has not already been spayed or neutered. In addition to any required spay or neuter deposit, the pound or shelter, at its discretion, may assess a fee, not to exceed the standard adoption fee, for the animal released.

SEC. 15. Section 31753 is added to the Food and Agricultural Code, to read:

31753. Any rabbit, guinea pig, hamster, pot-bellied pig, bird, lizard, snake, turtle, or tortoise legally allowed as personal property impounded in a public or private shelter shall be held for the same period of time, under the same requirements of care, and with the same opportunities for redemption and adoption by new owners or nonprofit, as defined in Section 501(c)(3) of the Internal Revenue Code, animal rescue or adoption organizations as cats and dogs. Section 17006 shall also apply to these animals. In addition to any required spay or neuter deposit, the pound or shelter, at its discretion, may assess a fee, not to exceed the standard adoption fee, for animals released to nonprofit animal rescue or adoption organizations pursuant to this section.

SEC. 16. Section 31754 is added to the Food and Agricultural Code, to read:

31754. (a) Except as provided in Section 17006, any animal relinquished by the purported owner that is of a species impounded by pounds or shelters shall be held for two full business days, not including the day of impoundment. The animal shall be available for owner redemption for the first day, not including the day of impoundment, and shall be available for owner redemption or adoption for the second day. After the second required day, the animal may be held longer, killed, or relinquished to a nonprofit, as defined in Section 501(c)(3) of the Internal Revenue Code, animal adoption organization under the same conditions and circumstances provided for stray dogs and cats in Sections 31108 and 31752.

(b) This section shall become operative on July 1, 1999. This section shall become inoperative on July 1, 2001, and, as of January 1, 2002, is repealed, unless a later enacted statute that is enacted before January 1, 2002, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 16.5. Section 31754 is added to the Food and Agricultural Code, to read:

31754. (a) Except as provided in Section 17006, any animal relinquished by the purported owner that is of a species impounded by pounds or shelters shall be held for the same holding periods, with the same requirements of care, applicable to stray dogs and cats in Sections 31108 and 31755, except that the period for owner redemption shall be one day, not including the day of impoundment, and the period for owner redemption or adoption shall be the remainder of the holding period.

(b) This section shall become operative on July 1, 2001.

SEC. 17. Section 32001 of the Food and Agricultural Code is amended to read:

32001. All public pounds, shelters operated by societies for the prevention of cruelty to animals, and humane shelters, that contract to perform public animal control services, shall provide the owners of lost animals and those who find lost animals with all of the following:

(a) Ability to list the animals they have lost or found on "Lost and Found" lists maintained by the pound or shelter.

(b) Referrals to animals listed that may be the animals the owners or finders have lost or found.

(c) The telephone numbers and addresses of other pounds and shelters in the same vicinity.

(d) Advice as to means of publishing and disseminating information regarding lost animals.

(e) The telephone numbers and addresses of volunteer groups that may be of assistance in locating lost animals.

The duties imposed by this section are mandatory duties for public entities for all purposes of the Government Code and for all private entities with which a public entity has contracted to perform those duties.

SEC. 18. Section 32003 is added to the Food and Agricultural Code, to read:

32003. All public pounds and private shelters shall keep accurate records on each animal taken up, medically treated, or impounded. The records shall include all of the following information and any other information required by the California Veterinary Medical Board:

(a) The date the animal was taken up, medically treated, euthanized, or impounded.

(b) The circumstances under which the animal was taken up, medically treated, euthanized, or impounded.

(c) The names of the personnel who took up, medically treated, euthanized, or impounded the animal.

(d) A description of any medical treatment provided to the animal and the name of the veterinarian of record.

(e) The final disposition of the animal, including the name of the person who euthanized the animal or the name and address of the adopting party. These records shall be maintained for three years after the date the animal's impoundment ends.

SEC. 19. Section 597.1 of the Penal Code is amended to read:

597.1. (a) Every owner, driver, or keeper of any animal who permits the animal to be in any building, enclosure, lane, street, square, or lot of any city, county, city and county, or judicial district without proper care and attention is guilty of a misdemeanor. Any peace officer, humane society officer, or animal control officer shall take possession of the stray or abandoned animal and shall provide care and treatment for the animal until the animal is deemed to be in suitable condition to be returned to the owner. When the officer has reasonable grounds to believe that very prompt action is required to protect the health or safety of the animal or the health or safety of others, the officer shall immediately seize the animal and comply with subdivision (f). In all other cases, the officer shall comply with the provisions of subdivision (g). The cost of caring for and treating any animal properly seized under this subdivision shall constitute a lien on the animal and the animal shall not be returned to its owner until the charges are paid, if the seizure is upheld pursuant to this section.

(b) Every sick, disabled, infirm, or crippled animal, except a dog or cat, that is abandoned in any city, county, city and county, or judicial district may be killed by the officer if, after a reasonable search, no owner of the animal can be found. It shall be the duty of all peace officers, humane society officers, and animal control officers to cause the animal to be killed or rehabilitated and placed in a suitable home on information that the animal is stray or abandoned. The officer may likewise take charge of any animal, including a dog or cat, that by reason of lameness, sickness, feebleness, or neglect, is unfit for the labor it is performing, or that in any other manner is being cruelly treated, and provide care and treatment for the animal until it is deemed to be in a suitable condition to be returned to the owner. When the officer has reasonable grounds to believe that very prompt action is required to protect the health or safety of an animal or the health or safety of others, the officer shall immediately seize the animal and comply with subdivision (f). In all other cases, the officer shall comply with subdivision (g). The cost of caring for and treating any animal properly seized under this subdivision shall constitute a lien on the animal and the animal shall not be returned to its owner until the charges are paid.

(c) Any peace officer, humane society officer, or animal control officer shall convey all injured cats and dogs found without their owners in a public place directly to a veterinarian known by the officer to be a veterinarian who ordinarily treats dogs and cats for a determination of whether the animal shall be immediately and

humanely destroyed or shall be hospitalized under proper care and given emergency treatment.

If the owner does not redeem the animal within the locally prescribed waiting period, the veterinarian may personally perform euthanasia on the animal. If the animal is treated and recovers from its injuries, the veterinarian may keep the animal for purposes of adoption, provided the responsible animal control agency has first been contacted and has refused to take possession of the animal.

Whenever any animal is transferred to a veterinarian in a clinic, such as an emergency clinic that is not in continuous operation, the veterinarian may, in turn, transfer the animal to an appropriate facility.

If the veterinarian determines that the animal shall be hospitalized under proper care and given emergency treatment, the costs of any services that are provided pending the owner's inquiry to the responsible agency, department, or society shall be paid from the dog license fees, fines, and fees for impounding dogs in the city, county, or city and county in which the animal was licensed or, if the animal is unlicensed, shall be paid by the jurisdiction in which the animal was found, subject to the provision that this cost be repaid by the animal's owner. The cost of caring for and treating any animal seized under this subdivision shall constitute a lien on the animal and the animal shall not be returned to the owner until the charges are paid. No veterinarian shall be criminally or civilly liable for any decision that he or she makes or for services that he or she provides pursuant to this subdivision.

(d) An animal control agency that takes possession of an animal pursuant to subdivision (c) shall keep records of the whereabouts of the animal from the time of possession to the end of the animal's impoundment, and those records shall be available for inspection by the public upon request for three years after the date the animal's impoundment ended.

(e) Notwithstanding any other provision of this section, any peace officer, humane society officer, or any animal control officer may, with the approval of his or her immediate superior, humanely destroy any stray or abandoned animal in the field in any case where the animal is too severely injured to move or where a veterinarian is not available and it would be more humane to dispose of the animal.

(f) Whenever an officer authorized under this section seizes or impounds an animal based on a reasonable belief that prompt action is required to protect the health or safety of the animal or the health or safety of others, the officer shall, prior to the commencement of any criminal proceedings authorized by this section, provide the owner or keeper of the animal, if known or ascertainable after reasonable investigation, with the opportunity for a postseizure hearing to determine the validity of the seizure or impoundment, or both.

(1) The agency shall cause a notice to be affixed to a conspicuous place where the animal was situated or personally deliver a notice of the seizure or impoundment, or both, to the owner or keeper within 48 hours, excluding weekends and holidays. The notice shall include all of the following:

(A) The name, business address, and telephone number of the officer providing the notice.

(B) A description of the animal seized, including any identification upon the animal.

(C) The authority and purpose for the seizure, or impoundment, including the time, place, and circumstances under which the animal was seized.

(D) A statement that, in order to receive a postseizure hearing, the owner or person authorized to keep the animal, or his or her agent, shall request the hearing by signing and returning an enclosed declaration of ownership or right to keep the animal to the agency providing the notice within 10 days, including weekends and holidays, of the date of the notice. The declaration may be returned by personal delivery or mail.

(E) A statement that the cost of caring for and treating any animal properly seized under this section is a lien on the animal and that the animal shall not be returned to the owner until the charges are paid, and that failure to request or to attend a scheduled hearing shall result in liability for this cost.

(2) The postseizure hearing shall be conducted within 48 hours of the request, excluding weekends and holidays. The seizing agency may authorize its own officer or employee to conduct the hearing if the hearing officer is not the same person who directed the seizure or impoundment of the animal and is not junior in rank to that person. The agency may utilize the services of a hearing officer from outside the agency for the purposes of complying with this section.

(3) Failure of the owner or keeper, or of his or her agent, to request or to attend a scheduled hearing shall result in a forfeiture of any right to a postseizure hearing or right to challenge his or her liability for costs incurred.

(4) The agency, department, or society employing the person who directed the seizure shall be responsible for the costs incurred for caring and treating the animal, if it is determined in the postseizure hearing that the seizing officer did not have reasonable grounds to believe very prompt action, including seizure of the animal, was required to protect the health or safety of the animal or the health or safety of others. If it is determined the seizure was justified, the owner or keeper shall be personally liable to the seizing agency for the cost of the seizure and care of the animal, the charges for the seizure and care of the animal shall be a lien on the animal, and the animal shall not be returned to its owner until the charges are paid and the seizing agency or hearing officer has determined that the animal is physically fit or the owner demonstrates to the seizing

agency's or the hearing officer's satisfaction that the owner can and will provide the necessary care.

(g) Where the need for immediate seizure is not present and prior to the commencement of any criminal proceedings authorized by this section, the agency shall provide the owner or keeper of the animal, if known or ascertainable after reasonable investigation, with the opportunity for a hearing prior to any seizure or impoundment of the animal. The owner shall produce the animal at the time of the hearing unless, prior to the hearing, the owner has made arrangements with the agency to view the animal upon request of the agency, or unless the owner can provide verification that the animal was humanely destroyed. Any person who willfully fails to produce the animal or provide the verification is guilty of an infraction, punishable by a fine of not less than two hundred fifty dollars ($250) nor more than one thousand dollars ($1,000).

(1) The agency shall cause a notice to be affixed to a conspicuous place where the animal was situated or personally deliver a notice stating the grounds for believing the animal should be seized under subdivision (a) or (b). The notice shall include all of the following:

(A) The name, business address, and telephone number of the officer providing the notice.

(B) A description of the animal to be seized, including any identification upon the animal.

(C) The authority and purpose for the possible seizure or impoundment.

(D) A statement that, in order to receive a hearing prior to any seizure, the owner or person authorized to keep the animal, or his or her agent, shall request the hearing by signing and returning the enclosed declaration of ownership or right to keep the animal to the officer providing the notice within two days, excluding weekends and holidays, of the date of the notice.

(E) A statement that the cost of caring for and treating any animal properly seized under this section is a lien on the animal, that any animal seized shall not be returned to the owner until the charges are paid, and that failure to request or to attend a scheduled hearing shall result in a conclusive determination that the animal may properly be seized and that the owner shall be liable for the charges.

(2) The preseizure hearing shall be conducted within 48 hours, excluding weekends and holidays, after receipt of the request. The seizing agency may authorize its own officer or employee to conduct the hearing if the hearing officer is not the same person who requests the seizure or impoundment of the animal and is not junior in rank to that person. The agency may utilize the services of a hearing officer from outside the agency for the purposes of complying with this section.

(3) Failure of the owner or keeper, or his or her agent, to request or to attend a scheduled hearing shall result in a forfeiture of any right

to a preseizure hearing or right to challenge his or her liability for costs incurred pursuant to this section.

(4) The hearing officer, after the hearing, may affirm or deny the owner's or keeper's right to custody of the animal and, if reasonable grounds are established, may order the seizure or impoundment of the animal for care and treatment.

(h) If any animal is properly seized under this section, the owner or keeper shall be personally liable to the seizing agency for the cost of the seizure and care of the animal. Furthermore, if the charges for the seizure or impoundment and any other charges permitted under this section are not paid within 14 days of the seizure, or, if the owner, within 14 days of notice of availability of the animal to be returned, fails to pay charges permitted under this section and take possession of the animal, the animal shall be deemed to have been abandoned and may be disposed of by the impounding officer.

(i) If the animal requires veterinary care and the humane society or public agency is not assured, within 14 days of the seizure of the animal, that the owner will provide the necessary care, the animal shall not be returned to its owner and shall be deemed to have been abandoned and may be disposed of by the impounding officer. A veterinarian may humanely destroy an impounded animal without regard to the prescribed holding period when it has been determined that the animal has incurred severe injuries or is incurably crippled. A veterinarian also may immediately humanely destroy an impounded animal afflicted with a serious contagious disease unless the owner or his or her agent immediately authorizes treatment of the animal by a veterinarian at the expense of the owner or agent.

(j) No animal properly seized under this section shall be returned to its owner until, in the determination of the seizing agency or hearing officer, the animal is physically fit or the owner can demonstrate to the seizing agency's or hearing officer's satisfaction that the owner can and will provide the necessary care.

(k) Upon the conviction of a person charged with a violation of this section, or Section 597 or 597a, all animals lawfully seized and impounded with respect to the violation shall be adjudged by the court to be forfeited and shall thereupon be transferred to the impounding officer or appropriate public entity for proper adoption or other disposition. A person convicted of a violation of this section shall be personally liable to the seizing agency for all costs of impoundment from the time of seizure to the time of proper disposition. Upon conviction, the court shall order the convicted person to make payment to the appropriate public entity for the costs incurred in the housing, care, feeding, and treatment of the seized or impounded animals. Each person convicted in connection with a particular animal may be held jointly and severally liable for restitution for that particular animal. The payment shall be in addition to any other fine or sentence ordered by the court.

The court may also order, as a condition of probation, that the convicted person be prohibited from owning, possessing, caring for, or having any contact with, animals of any kind and require the convicted person to immediately deliver all animals in his or her possession to a designated public entity for adoption or other lawful disposition or provide proof to the court that the person no longer has possession, care, or control of any animals. In the event of the acquittal or final discharge without conviction of the arrested person, the court shall, on demand, direct the release of seized or impounded animals upon a showing of proof of ownership. Any questions regarding ownership shall be determined in a separate hearing by the court where the criminal case was finally adjudicated and the court shall hear testimony from any persons who may assist the court in determining ownership of the animal. If the owner is determined to be unknown or the owner is prohibited or unable to retain possession of the animals for any reason, the court shall order the animals to be released to the appropriate public entity for adoption or other lawful disposition. This section is not intended to cause the release of any animal, bird, reptile, amphibian, or fish, seized or impounded pursuant to any other statute, ordinance, or municipal regulation. This section shall not prohibit the seizure or impoundment of animals as evidence as provided for under any other provision of law.

(*l*) It shall be the duty of all peace officers, humane society officers, and animal control officers to use all currently acceptable methods of identification, both electronic and otherwise, to determine the lawful owner or caretaker of any seized or impounded animal. It shall also be their duty to make reasonable efforts to notify the owner or caretaker of the whereabouts of the animal and any procedures available for the lawful recovery of the animal and, upon the owner's and caretaker's initiation of recovery procedures, retain custody of the animal for a reasonable period of time to allow for completion of the recovery process. Efforts to locate or contact the owner or caretaker and communications with persons claiming to be the owner or caretaker shall be recorded and maintained and be made available for public inspection.

SEC. 20. Section 599d is added to the Penal Code, to read:

599d. (a) It is the policy of the state that no adoptable animal should be euthanized if it can be adopted into a suitable home. Adoptable animals include only those animals eight weeks of age or older that, at or subsequent to the time the animal is impounded or otherwise taken into possession, have manifested no sign of a behavioral or temperamental defect that could pose a health or safety risk or otherwise make the animal unsuitable for placement as a pet, and have manifested no sign of disease, injury, or congenital or hereditary condition that adversely affects the health of the animal or that is likely to adversely affect the animal's health in the future.

(b) It is the policy of the state that no treatable animal should be euthanized. A treatable animal shall include any animal that is not adoptable but that could become adoptable with reasonable efforts. This subdivision, by itself, shall not be the basis of liability for damages regarding euthanasia.

SEC. 21. Sections 12 and 13 of this act shall become operative on July 1, 1999.

SEC. 22. 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 753

An act to amend Sections 13575, 13580, 13581, and 13582 of, and to add Sections 13580.5, 13580.7, 13580.8, 13580.9, 13581.2, and 13583 to, the Water Code, relating to recycled water service.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. Section 13575 of the Water Code is amended to read:

13575. (a) This chapter shall be known and may be cited as the Water Recycling Act of 1991.

(b) As used in this chapter, the following terms have the following meanings:

(1) "Customer" means a person or entity that purchases water from a retail water supplier.

(2) "Entity responsible for groundwater replenishment" means any person or entity authorized by statute or court order to manage a groundwater basin and acquire water for groundwater replenishment.

(3) "Recycled water" has the same meaning as defined in subdivision (n) of Section 13050.

(4) "Recycled water producer" means any local public entity that produces recycled water.

(5) "Recycled water wholesaler" means any local public entity that distributes recycled water to retail water suppliers and which has constructed, or is constructing, a recycled water distribution system.

(6) "Retail water supplier" means any local entity, including a public agency, city, county, or private water company, that provides retail water service.

(7) "Retailer" means the retail water supplier in whose service area is located the property to which a customer requests the delivery of recycled water service.

SEC. 2. Section 13580 of the Water Code is amended to read:

13580. (a) A retail water supplier that has identified a potential use or customer pursuant to Section 13579 may apply to a recycled water producer or recycled water wholesaler for a recycled water supply.

(b) A recycled water producer or recycled water wholesaler that has identified a potential use or customer pursuant to Section 13579 may, in writing, request a retail water supplier to enter into an agreement to provide recycled water to the potential customer.

(c) A customer may request, in writing, a retailer to enter into an agreement to provide recycled water to the customer.

(d) (1) An entity responsible for groundwater replenishment that is a customer of a retail water supplier and that has identified the potential use of recycled water for groundwater replenishment purposes may, in writing, request that retail water supplier to enter into an agreement to provide recycled water for that purpose. That entity may not obtain recycled water for that purpose from a recycled water producer, a recycled water wholesaler, or another retail water supplier without the agreement of the entity's retail water supplier.

(2) An entity responsible for groundwater replenishment that is not a customer of a retail water supplier and that has identified the potential use of recycled water for groundwater replenishment purposes may, in writing, request a retail water supplier, a recycled water producer, or a recycled water wholesaler to enter into an agreement to provide recycled water for that purpose.

SEC. 3. Section 13580.5 is added to the Water Code, to read:

13580.5. (a) (1) Subject to subdivision (d) of Section 13580.7, a retail water supplier that receives a request from a customer pursuant to subdivision (c) of Section 13580 shall enter into an agreement to provide recycled water, if recycled water is available, or can be made available, to the retail water supplier for sale to the customer.

(2) Notwithstanding paragraph (1), in accordance with a written agreement between a recycled water producer or a recycled water wholesaler and a retail water supplier, the retail water supplier may delegate to a recycled water producer or a recycled water wholesaler its responsibility under this section to provide recycled water.

(b) A customer may not obtain recycled water from a recycled water producer, a recycled water wholesaler, or a retail water supplier that is not the retailer without the agreement of the retailer.

(c) If either a recycled water producer or a recycled water wholesaler provides a customer of a retail water supplier with a written statement that it can and will provide recycled water to the retailer, the retail water supplier shall, not later than 120 days from the date on which the retail water supplier receives the written statement from the customer, by certified mail, return receipt requested, submit a written offer to the customer. A determination of availability pursuant to Section 13550 is not required.

(d) If the state board pursuant to Section 13550 makes a determination that there is available recycled water to serve a customer of a retail water supplier, the retail water supplier, not later than 120 days from the date on which the retail water supplier receives a copy of that determination from the customer, by certified mail, return receipt requested, shall submit a written offer to the customer.

SEC. 4. Section 13580.7 is added to the Water Code, to read:

13580.7. (a) This section applies only to a retail water supplier that is a public agency.

(b) If no rate is in effect for recycled water service within the service area of a retail water supplier, the rate and conditions of service for recycled water service shall be established by contract between the retail water supplier and the customer.

(c) A rate for recycled water service established by contract, ordinance, or resolution, shall reflect a reasonable relationship between the amount of the rate and the retail cost of obtaining or producing the recycled water, the cost of conveying the recycled water, and overhead expenses for providing recycled water service. Capital costs of facilities required to serve the customer shall be amortized over the economic life of the facility, or the length of time the customer agrees to purchase recycled water, whichever is less. The rate shall not exceed the estimated reasonable cost of providing the service, and any additional costs agreed to by the customer for recycled water supplemental treatment.

(d) The rate for recycled water shall be comparable to, or less than, the retail water supplier's rate for potable water. If recycled water service cannot be provided at a rate comparable to, or less than, the rate for potable water, the retail water supplier is not required to provide the recycled water service, unless the customer agrees to pay a rate that reimburses the retail water supplier for the costs described in subdivision (c).

(e) The offer required by subdivisions (c) and (d) of Section 13580.5 shall identify all of the following:

(1) The source for the recycled water.

(2) The method of conveying the recycled water.

(3) A schedule for delivery of the recycled water.

(4) The terms of service.

(5) The rate for the recycled water, including the per-unit cost for that water.

(6) The costs necessary to provide service and the basis for determining those costs.

(f) This section does not apply to recycled water service rates established before January 1, 1999, or any amendments to those rates.

SEC. 5. Section 13580.8 is added to the Water Code, to read:

13580.8. (a) This section applies only to a retail water supplier that is regulated by the Public Utilities Commission.

(b) Rates for recycled water that is provided to the customer by a retail water supplier regulated by the Public Utilities Commission shall be established by the commission pursuant to Section 455.1 of the Public Utilities Code. A regulated water utility may request the commission to establish the rate or rates for the delivery of recycled or nonpotable water, with the objective of providing, where practicable, a reasonable economic incentive for the customer to purchase recycled or nonpotable water in place of potable water.

(c) A regulated water utility may propose a rate or rates for recycled or nonpotable water by tariff or by contract between the retail water supplier and the customer. Where the rate or rates are set by contract, the water utility and its customer shall meet, confer, and negotiate in good faith to establish a contract rate.

(d) The commission shall, as appropriate, provide a discount from the general metered rate of the water utility for potable water by either of the following means:

(1) Passing through to the customer the net reduction in cost to the water utility in purchasing and delivering recycled or nonpotable water as compared to the cost of purchasing and delivering potable water.

(2) Granting to the customer a uniform discount from the water utility's general metered potable water rate when the discount in paragraph (1) is determined to be an insufficient incentive for the customer to convert to the use of recycled or nonpotable water. If the commission provides for a discount pursuant to this paragraph that is greater than the water utility's reduction in cost, the commission shall authorize the water utility to include the aggregate amount of that discount in its revenue requirements to be applied to, and recovered in, rates that are applicable to all general metered customers.

SEC. 6. Section 13580.9 is added to the Water Code, to read:

13580.9. (a) Notwithstanding any other provision of law, and except as otherwise previously provided for in a contract agreed to by the customer and the City of West Covina, if the purchaser, contractor, or lessee of, or successor to, all or a portion of the water utility owned by the City of West Covina is a retail water supplier that is regulated by the Public Utilities Commission, rates for recycled or nonpotable water service to a closed hazardous waste and solid waste

facility located within the boundaries of the City of West Covina for the purposes of irrigation, recreation, or dust suppression or any other use at that facility shall be established in accordance with subdivisions (a) to (e), inclusive, of Section 13580.7, and if there is a failure to agree on the terms and conditions of a recycled or nonpotable water supply agreement for the delivery of water for those purposes by that purchaser, contractor, lessee, or successor, Section 13581 shall apply.

(b) For the purpose of this section, nonpotable water that is not the result of the treatment of waste shall be treated as the equivalent of recycled water if it is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is therefor considered a valuable resource, if the use of that water will not adversely affect downstream water rights, degrade water quality, or be injurious to plant life, fish, or wildlife, as provided by statute or by regulations of the State Department of Health Services and the state board or a regional board, as appropriate.

SEC. 7. Section 13581 of the Water Code is amended to read:

13581. (a) If there is a failure to agree on terms and conditions of a recycled water supply agreement involving a retail water supplier that is a public agency within 180 days from the date of the receipt of a request for recycled water pursuant to subdivision (c) of Section 13580, a written statement pursuant to subdivision (c) of Section 13580.5, or a determination of availability pursuant to subdivision (d) of Section 13580.5, any party may request a formal mediation process. The parties shall commence mediation within 60 days after the mediation request is made. If the parties cannot agree on a mediator, the director shall appoint a mediator. The mediator may recommend to the parties appropriate terms and conditions applicable to the service of recycled water. The cost for the services of the mediator shall be divided equally among the parties to the mediation and shall not exceed twenty thousand dollars ($20,000).

(b) If the parties in mediation reach agreement, both parties together shall draft the contract for the recycled water service. The parties shall sign the contract within 30 days.

(c) If the parties in mediation fail to reach agreement, the affected retail water supplier shall, within 30 days, by resolution or ordinance, adopt a rate for recycled water service. The agency action shall be subject to validating proceedings pursuant to Chapter 9 (commencing with Section 860) of Part 2 of Title 10 of the Code of Civil Procedure, except that there shall not be a presumption in favor of the retail water supplier under the action taken to set the rate for recycled water service. The mediator shall file a report with the superior court setting forth the recommendations provided to the parties regarding appropriate terms and conditions applicable to the service of recycled water. Each party shall bear its own costs and attorney's fees.

SEC. 8. Section 13581.2 is added to the Water Code, to read:

13581.2. If the retail water supplier is regulated by the Public Utilities Commission, and there is a failure to agree on terms and conditions of a recycle water supply agreement with a customer within 180 days from the date of the receipt of a request for recycled water pursuant to subdivision (c) of Section 13580, a written statement pursuant to subdivision (c) of Section 13580.5, or a determination of availability pursuant to subdivision (d) of Section 13580.5, the matter shall be submitted to the Public Utilities Commission for resolution, and the commission shall determine a contract rate or rates for recycled water as provided in Section 13580.8.

SEC. 9. Section 13582 of the Water Code is amended to read:

13582. This chapter is not intended to alter either of the following:

(a) Any rights, remedies, or obligations which may exist pursuant to Article 1.5 (commencing with Section 1210) of Chapter 1 of Part 2 of Division 2 of this code or Chapter 8.5 (commencing with Section 1501) of Part 1 of Division 1 of the Public Utilities Code.

(b) Any rates established or contracts entered into prior to January 1, 1999.

SEC. 10. Section 13583 is added to the Water Code, to read:

13583. (a) If a retail water supplier that is a public agency does not comply with this chapter, the customer may petition a court for a writ of mandate pursuant to Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure.

(b) If a retail water supplier is regulated by the Public Utilities Commission and does not comply with this chapter, the Public Utilities Commission may order the retailer to comply with this chapter after receiving a petition from the customer specifying the provisions of this chapter with which the retailer has failed to comply.

CHAPTER 754

An act to amend Sections 1192.7 and 1192.8 of the Penal Code, relating to serious felonies.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. Section 1192.7 of the Penal Code is amended to read:

1192.7. (a) Plea bargaining in any case in which the indictment or information charges any serious felony, any felony in which it is alleged that a firearm was personally used by the defendant, or any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient evidence to prove

the people's case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence.

(b) As used in this section, "plea bargaining" means any bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant.

(c) As used in this section, "serious felony" means any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape.

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

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

(6) Lewd or lascivious act on a child under the age of 14 years.

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

(8) Any other felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm.

(9) Attempted murder.

(10) Assault with intent to commit rape, mayhem, sodomy, oral copulation, or robbery.

(11) Assault with a deadly weapon or instrument on a peace officer.

(12) Assault by a life prisoner on a noninmate.

(13) Assault with a deadly weapon by an inmate.

(14) Arson.

(15) Exploding a destructive device or any explosive with intent to injure.

(16) Exploding a destructive device or any explosive causing great bodily injury or mayhem.

(17) Exploding a destructive device or any explosive with intent to murder.

(18) Burglary of an inhabited dwelling house, vessel, as defined in the Harbors and Navigation Code, which is inhabited and designed for habitation, floating home, as defined in subdivision (d) of Section 18075.55 of the Health and Safety Code, trailer coach, as defined by the Vehicle Code, or the inhabited portion of any other building.

(19) Robbery or bank robbery.

(20) Kidnapping.

(21) Holding of a hostage by a person confined in a state prison.

(22) Attempt to commit a felony punishable by death or imprisonment in the state prison for life.

(23) Any felony in which the defendant personally used a dangerous or deadly weapon.

(24) Selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code.

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

(26) Grand theft involving a firearm.

(27) Carjacking.

(28) Any violation of Section 288.5.

(29) Any violation of Section 244.

(30) Assault with a deadly weapon or instrument on a firefighter.

(31) Any violation of Section 264.1.

(32) Any violation of Section 12022.53.

(33) Any attempt to commit a crime listed in this subdivision other than an assault.

(34) Any conspiracy to commit an offense described in paragraph (24) as it applies to Section 11370.4 of the Health and Safety Code where the defendant conspirator was substantially involved in the planning, direction, or financing of the underlying offense.

(d) As used in this section, "bank robbery" means to take or attempt to take, by force or violence, or by intimidation from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association.

As used in this subdivision, the following terms have the following meanings:

(1) "Bank" means any member bank of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

(2) "Savings and loan association" means any federal savings and loan association and any "insured institution" as defined in Section 401 of the National Housing Act, as amended, and any federal credit union as defined in Section 2 of the Federal Credit Union Act.

(3) "Credit union" means any federal credit union and any state-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union Administration.

(e) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 1.5. Section 1192.7 of the Penal Code is amended to read:

1192.7. (a) Plea bargaining in any case in which the indictment or information charges any serious felony, any felony in which it is alleged that a firearm was personally used by the defendant, or any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient evidence to prove the people's case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence.

(b) As used in this section, "plea bargaining" means any bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant.

(c) As used in this section, "serious felony" means any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape.

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

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

(6) Lewd or lascivious act on a child under the age of 14 years.

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

(8) Any other felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm.

(9) Attempted murder.

(10) Assault with intent to commit rape, mayhem, sodomy, oral copulation, or robbery.

(11) Assault with a deadly weapon or instrument on a peace officer.

(12) Assault by a life prisoner on a noninmate.

(13) Assault with a deadly weapon by an inmate.

(14) Arson.

(15) Exploding a destructive device or any explosive with intent to injure.

(16) Exploding a destructive device or any explosive causing great bodily injury or mayhem.

(17) Exploding a destructive device or any explosive with intent to murder.

(18) Burglary of an inhabited dwelling house, vessel, as defined in the Harbors and Navigation Code, which is inhabited and designed for habitation, floating home, as defined in subdivision (d) of Section 18075.55 of the Health and Safety Code, trailer coach, as defined by the Vehicle Code, or the inhabited portion of any other building.

(19) Robbery or bank robbery.

(20) Kidnapping.

(21) Holding of a hostage by a person confined in a state prison.

(22) Attempt to commit a felony punishable by death or imprisonment in the state prison for life.

(23) Any felony in which the defendant personally used a dangerous or deadly weapon.

(24) Selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code.

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

(26) Grand theft involving a firearm.

(27) Carjacking.

(28) Any violation of Section 288.5.

(29) Any violation of Section 244.

(30) Assault with a deadly weapon or instrument on a firefighter.

(31) Any violation of Section 264.1.

(32) Any violation of Section 12022.53.

(33) Any attempt to commit a crime listed in this subdivision other than an assault.

(34) Any conspiracy to commit an offense described in paragraph (24) as it applies to Section 11370.4 of the Health and Safety Code where the defendant conspirator was substantially involved in the planning, direction, or financing of the underlying offense.

(d) As used in this section, "bank robbery" means to take or attempt to take, by force or violence, or by intimidation from the person or presence of another any property or money or any other

thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association.

As used in this subdivision, the following terms have the following meanings:

(1) "Bank" means any member bank of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

(2) "Savings and loan association" means any federal savings and loan association and any "insured institution" as defined in Section 401 of the National Housing Act, as amended, and any federal credit union as defined in Section 2 of the Federal Credit Union Act.

(3) "Credit union" means any federal credit union and any state-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union Administration.

(e) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 2. Section 1192.8 of the Penal Code is amended to read:

1192.8. (a) For purposes of subdivision (c) of Section 1192.7, "serious felony" also means any violation of Section 191.5, paragraph (1) or (3) of subdivision (c) of Section 192, paragraph (a) or (c) of Section 192.5 of this code, or Section 2800.3, subdivision (b) of Section 23104, or Section 23153 of the Vehicle Code, when any of these offenses involve the personal infliction of great bodily injury on any person other than an accomplice, or the personal use of a dangerous or deadly weapon, within the meaning of paragraph (8) or (23) of subdivision (c) of Section 1192.7.

(b) It is the intent of the Legislature, in enacting subdivision (b), to codify the court decisions of People v. Gonzales, 29 Cal. App. 4th 1684, and People v. Bow, 13 Cal. App. 4th 1551, and to clarify that the crimes specified in subdivision (b) have always been, and continue to be, serious felonies within the meaning of subdivision (c) of Section 1192.7.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

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

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 1192.7 of the Penal Code proposed by both this bill and SB 2168. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 1192.7 of the Penal Code, and (3) this bill is enacted after SB 2168, in which case Section 1192.7 of the Penal Code as amended by SB 2168, 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.

CHAPTER 755

An act to amend Section 939 of, and to add Section 939.21 to, the Penal Code, relating to grand juries.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. Section 939 of the Penal Code is amended to read:

939. No person other than those specified in Article 3 (commencing with Section 934), and in Sections 939.1, 939.11, and 939.21, and the officer having custody of a prisoner witness while the prisoner is testifying, is permitted to be present during the criminal sessions of the grand jury except the members and witnesses actually under examination. Members of the grand jury who have been excused pursuant to Section 939.5 shall not be present during any part of these proceedings. No persons other than grand jurors shall be permitted to be present during the expression of the opinions of the grand jurors, or the giving of their votes, on any criminal or civil matter before them.

SEC. 2. Section 939.21 is added to the Penal Code, to read:

939.21. (a) Any prosecution witness before the grand jury in a proceeding involving a violation of Section 243.4, 261, 273a, 273d, 285, 286, 288, 288a, 288.5, or 289, subdivision 1 of Section 314, Section 647.6, or former Section 647a, who is a minor, may, at the discretion of the prosecution, select a person of his or her own choice to attend the testimony of the prosecution witness for the purpose of providing support. The person chosen shall not be a witness in the same proceeding, or a person described in Section 1070 of the Evidence Code.

(b) The grand jury foreman shall inform any person permitted to attend the grand jury proceedings pursuant to this section that grand jury proceedings are confidential and may not be discussed with

anyone not in attendance at the proceedings. The foreman also shall admonish that person not to prompt, sway, or influence the witness in any way. Nothing in this section shall preclude the presiding judge from exercising his or her discretion to remove a person from the grand jury proceeding whom the judge believes is prompting, swaying, or influencing the witness.

CHAPTER 756

An act to amend Sections 11837 and 11837.1 of the Health and Safety Code, to amend Sections 1803, 12813, 13352, 13352.4, 14601.2, 23160, 23161, 23166, 23186, 23203, 23204, 23235, 23246, and 23247 of, to amend the heading of Article 4.5 (commencing with Section 23246) of Chapter 12 of Division 11 of, to add Section 23249.1 to, to repeal Sections 23167 and 23187 of, and to repeal and add Sections 13352.5 and 23249 of, the Vehicle Code, relating to vehicles.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. This act shall be known as, and may be cited as, the Bryan Fabian, Elijah and Isaac Howell Prevention of Drunk Driving Act.

SEC. 2. Section 11837 of the Health and Safety Code is amended to read:

11837. (a) Pursuant to the provisions of law relating to suspension of a person's privilege to operate a motor vehicle upon conviction for driving while under the influence of any alcoholic beverage or drug, or under the combined influence of any alcoholic beverage and any drug, as set forth in paragraph (3) of subdivision (a) of Section 13352 of the Vehicle Code, the Department of Motor Vehicles shall restrict the driving privilege pursuant to Section 13352.5 of the Vehicle Code, if the court has notified the department pursuant to Section 13352 of the Vehicle Code that the person convicted of that offense has consented to participate for at least 18 months in a program designed to offer alcohol and other drug education and counseling services that is licensed pursuant to this chapter.

(b) In determining whether to refer a person, who is ordered to participate in a program pursuant to Section 668 of the Harbors and Navigation Code, in a licensed alcohol and other drug education and counseling services program pursuant to Section 23161 of the Vehicle Code, or, pursuant to Section 23166, 23171, 23176, 23181, 23186, or 23191 of the Vehicle Code, in a licensed 18-month or 30-month program, the court may consider any relevant information about the

person made available pursuant to a presentence investigation, that is permitted but not required under Section 23205 of the Vehicle Code, or other screening procedure. That information shall not be furnished, however, by any person who also provides services in a privately operated, licensed program or who has any direct interest in a privately operated, licensed program. In addition, the court shall obtain from the Department of Motor Vehicles a copy of the person's driving record to determine whether the person is eligible to participate in a licensed 18-month or 30-month program pursuant to this chapter. When preparing a presentence report for the court, the probation department may consider the suitability of placing the defendant in a treatment program that includes the administration of nonscheduled, nonaddicting medications to ameliorate an alcohol or controlled substance problem. If the probation department recommends that this type of program is a suitable option for the defendant, the defendant who would like the court to consider this option shall obtain from his or her physician a prescription for the medication, and a finding that the treatment is medically suitable for the defendant, prior to consideration of this alternative by the court.

(c) The court may, as a condition of probation pursuant to Section 23161 or 23181 of the Vehicle Code, refer a first offender to a licensed program to attend all of the education, group counseling, and interview sessions described in this chapter if ordered to participate in 6, 9, or 12 months of program activities. Notwithstanding Section 13352.5 of the Vehicle Code, if a first offender is referred to a licensed program pursuant to Section 23161 or 23181 of the Vehicle Code, that person may participate in a program if convicted of another offense punishable under Section 23165 or 23185 of the Vehicle Code.

(d) The court may, subject to Section 11837.2, and as a condition of probation, refer a person to a licensed program, even though the person's privilege to operate a motor vehicle is restricted, suspended, or revoked. An 18-month program described in Section 23166 or 23186 of the Vehicle Code or a 30-month program described in Section 23171, 23176, or 23191 of the Vehicle Code may include treatment of family members and significant other persons related to the convicted person with the consent of those family members and others as described in this chapter, if there is no increase in the costs of the program to the convicted person.

SEC. 2.5. Section 11837 of the Health and Safety Code is amended to read:

11837. (a) Pursuant to the provisions of law relating to suspension of a person's privilege to operate a motor vehicle upon conviction for driving while under the influence of any alcoholic beverage or drug, or under the combined influence of any alcoholic beverage and any drug, as set forth in paragraph (3) of subdivision (a) of Section 13352 of the Vehicle Code, the Department of Motor Vehicles shall restrict the driving privilege pursuant to Section 13352.5 of the Vehicle Code, if the court has notified the department

pursuant to Section 13352 of the Vehicle Code that the person convicted of that offense has consented to participate for at least 18 months in a program designed to offer alcohol and other drug education and counseling services that is licensed pursuant to this chapter.

(b) In determining whether to refer a person, who is ordered to participate in a program pursuant to Section 668 of the Harbors and Navigation Code, in a licensed alcohol and other drug education and counseling services program pursuant to Section 23161 of the Vehicle Code, or, pursuant to Section 23166, 23171, 23176, 23181, 23186, or 23191 of the Vehicle Code, in a licensed 18-month or 30-month program, the court may consider any relevant information about the person made available pursuant to a presentence investigation, that is permitted but not required under Section 23205 of the Vehicle Code, or other screening procedure. That information shall not be furnished, however, by any person who also provides services in a privately operated, licensed program or who has any direct interest in a privately operated, licensed program. In addition, the court shall obtain from the Department of Motor Vehicles a copy of the person's driving record to determine whether the person is eligible to participate in a licensed 18-month or 30-month program pursuant to this chapter. When preparing a presentence report for the court, the probation department may consider the suitability of placing the defendant in a treatment program that includes the administration of nonscheduled nonaddicting medications to ameliorate an alcohol or controlled substance problem. If the probation department recommends that this type of program is a suitable option for the defendant, the defendant who would like the court to consider this option shall obtain from his or her physician a prescription for the medication, and a finding that the treatment is medically suitable for the defendant, prior to consideration of this alternative by the court.

(c) (1) The court shall, as a condition of probation pursuant to Section 23161 or 23181 of the Vehicle Code, refer a first offender whose concentration of alcohol in his or her blood was less than 0.20 percent, by weight, to participate for at least three months or longer, as ordered by the court, in a licensed program that consists of at least 30 hours of program activities, including those education, group counseling, and individual interview sessions described in this chapter. Notwithstanding Section 13352.5 of the Vehicle Code, a first offender who is referred to a licensed program pursuant to Section 23161 or 23181 of the Vehicle Code may participate in a program if convicted of another offense punishable under Section 23165 or 23185 of the Vehicle Code.

(2) Notwithstanding any other provision of law, in granting probation to a first offender described in this subdivision whose concentration of alcohol in the person's blood was 0.20 percent or more, by weight, or the person refused to take a chemical test, the court shall order the person to participate, for at least six months or

longer, as ordered by the court, in a licensed program that consists of at least 45 hours of program activities, including those education, group counseling, and individual interview sessions described in this chapter.

(d) (1) The State Department of Alcohol and Drug Programs shall specify in regulations the activities required to be provided in the treatment of participants receiving six months of licensed program services under Section 23161 or 23181 of the Vehicle Code.

(2) Any program licensed pursuant to this chapter may provide treatment services to participants receiving at least six months of licensed program services under Section 23161 or 23181 of the Vehicle Code.

(e) The court may, subject to Section 11837.2, and as a condition of probation, refer a person to a licensed program, even though the person's privilege to operate a motor vehicle is restricted, suspended, or revoked. An 18-month program described in Section 23166 or 23186 of the Vehicle Code or a 30-month program described in Section 23171, 23176, or 23191 of the Vehicle Code may include treatment of family members and significant other persons related to the convicted person with the consent of those family members and others as described in this chapter, if there is no increase in the costs of the program to the convicted person.

(f) The clerk of the court shall indicate the duration of the program in which the judge has ordered the person to participate in the abstract of the record of the court that is forwarded to the department.

SEC. 3. Section 11837.1 of the Health and Safety Code is amended to read:

11837.1. (a) In utilizing any program described in Section 11837, the court may require periodic reports concerning the performance of each person referred to and participating in a program. The program shall provide the court, the Department of Motor Vehicles, and the person participating in a program with an immediate report of any failure of the person to comply with the program's rules and policies.

(b) If, at any time after entry into or while participating in a program, a participant who is referred to an 18-month program described in Section 23166 of the Vehicle Code or a 30-month program described in Section 23171, 23176, or 23191 of the Vehicle Code, fails to comply with the rules and policies of the program, and that fact is reported, the Department of Motor Vehicles shall suspend the privilege of that person to operate a motor vehicle for the period prescribed by law in accordance with Section 13352.5 of the Vehicle Code, except as otherwise provided in this section. The Department of Motor Vehicles shall notify the person of its action.

(c) If the department withdraws the license of a program, the department shall immediately notify the Department of Motor Vehicles of those persons who do not commence participation in a

licensed program within 21 days from the date of the withdrawal of the license of the program in which the persons were previously participating. The Department of Motor Vehicles shall suspend or revoke, for the period prescribed by law, the privilege to operate a motor vehicle of each of those persons referred to an 18-month program pursuant to Section 23166 or 23186 of the Vehicle Code or to a 30-month program pursuant to Section 23171, 23176, or 23191 of the Vehicle Code.

SEC. 4. Section 1803 of the Vehicle Code is amended to read:

1803. (a) Every clerk of a court in which a person was convicted of any violation of this code, was convicted of any violation of subdivision (a), (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation Code pertaining to a mechanically propelled vessel but not to manipulating any water skis, an aquaplane, or similar device, was convicted of any violation of Section 655.2, 655.6, 658, or 658.5 of the Harbors and Navigation Code, or any violation of Section 191.5 of the Penal Code when the conviction resulted from the operation of a vessel, was convicted of any offense involving use or possession of controlled substances under Division 10 (commencing with Section 11000) of the Health and Safety Code, was convicted of any felony offense when a commercial motor vehicle, as defined in subdivision (b) of Section 15210, was involved in or incidental to the commission of the offense, or was convicted of any violation of any other statute relating to the safe operation of vehicles, shall prepare within 10 days after conviction and immediately forward to the department at its office at Sacramento an abstract of the record of the court covering the case in which the person was so convicted. If sentencing is not pronounced in conjunction with the conviction, the abstract shall be forwarded to the department within 10 days after sentencing and the abstract shall be certified by the person so required to prepare it to be true and correct.

For the purposes of this section, a forfeiture of bail shall be equivalent to a conviction.

(b) The following violations are not required to be reported under subdivision (a):

(1) Division 3.5 (commencing with Section 9840).

(2) Section 21113, with respect to parking violations.

(3) Chapter 9 (commencing with Section 22500) of Division 11, except Section 22526.

(4) Division 12 (commencing with Section 24000), except Sections 24002, 24004, 24250, 24409, 24604, 24800, 25103, 26707, 27151, 27315, 27360, 27800, and 27801 and Chapter 3 (commencing with Section 26301).

(5) Division 15 (commencing with Section 35000), except Chapter 5 (commencing with Section 35550).

(6) Violations for which a person was cited as a pedestrian or while operating a bicycle.

(7) Division 16.5 (commencing with Section 38000).

(8) Sections 23221, 23223, 23225, and 23226.

(c) If the court impounds a license, or orders a person to limit his or her driving pursuant to paragraph (2) of subdivision (a) of Section 23161, subdivision (b) of Section 23166, subdivision (b) of Section 23186, or subdivision (d) of Section 40508, the court shall notify the department concerning the impoundment or limitation on an abstract prepared pursuant to subdivision (a) of this section or on a separate abstract, which shall be prepared within 10 days after the impoundment or limitation was ordered and immediately forwarded to the department at its office in Sacramento.

(d) If the court determines that a prior judgment of conviction of a violation of Section 23152 or 23153 is valid or is invalid on constitutional grounds pursuant to Section 41403, the clerk of the court in which the determination is made shall prepare an abstract of that determination and forward it to the department in the same manner as an abstract of record pursuant to subdivision (a).

(e) Within 10 days of an order terminating or revoking probation under Section 23207, the clerk of the court in which the order terminating or revoking probation was entered, shall prepare and immediately forward to the department at its office in Sacramento an abstract of the record of the court order terminating or revoking probation and any other order of the court to the department required by law.

SEC. 5. Section 12813 of the Vehicle Code is amended to read:

12813. (a) The department may, upon issuing a driver's license or after issuance whenever good cause appears, impose restrictions suitable to the licensee's driving ability with respect to the type of, or special mechanical control devices required on, a motor vehicle which the licensee may operate or impose other restrictions applicable to the licensee that the department may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee.

(b) The department may issue either a special restricted license or may set forth the restrictions upon the usual license form.

(c) The authority of the department to issue restricted licenses under this section is subject to Sections 12812, 13352, and 13352.5.

SEC. 6. Section 13352 of the Vehicle Code is amended to read:

13352. (a) The department shall immediately suspend or revoke, or record the court-administered suspension or revocation of, the privilege of any person to operate a motor vehicle upon receipt of a duly certified abstract of the record of any court showing that the person has been convicted of a violation of Section 23152 or 23153 or subdivision (a) of Section 23109, or upon receipt of a report of a judge of the juvenile court, a juvenile traffic hearing officer, or a referee of a juvenile court showing that the person has been found to have committed a violation of Section 23152 or 23153 or subdivision (a) of Section 23109. If any offense specified in this section occurs in a vehicle defined in Section 15210, the suspension or revocation

specified below shall apply to the noncommercial driving privilege. The commercial driving privilege shall be disqualified as specified in Section 15300. For the purposes of this section, suspension or revocation shall be as follows:

(1) Upon a conviction or finding of a violation of Section 23152 punishable under Section 23160, the privilege shall be suspended for a period of six months. The privilege shall not be reinstated until the person gives proof of ability to respond in damages and gives proof satisfactory to the department of successful completion of a program described in subdivision (b) of Section 23161. The department shall issue a restricted license upon receipt of an abstract of record from the court certifying the court has granted probation to the person based on the conditions specified in paragraph (2) of subdivision (a) of, and subdivision (b) of, Section 23161.

(2) Upon a conviction or finding of a violation of Section 23153 punishable under Section 23180, the privilege shall be suspended for a period of one year. The privilege shall not be reinstated until the person gives proof of ability to respond in damages and gives proof satisfactory to the department of successful completion of a program described in Section 23181.

(3) Except as provided in Section 13352.5, upon a conviction or finding of a violation of Section 23152 punishable under Section 23165, the privilege shall be suspended for two years. The privilege shall not be reinstated until the person gives proof of ability to respond in damages and gives proof satisfactory to the department of successful completion, subsequent to the most recent underlying conviction, of a program described in Section 23166. The department shall advise the person that after completion of 12 months of the suspension period, the person may apply to the department for a restricted driver's license, subject to the following conditions:

(A) The person has satisfactorily provided, subsequent to the current underlying conviction, either of the following:

(i) Proof of enrollment in a licensed 18-month program pursuant to Section 11836 of the Health and Safety Code.

(ii) Proof of enrollment in a licensed 30-month program, if available in the county of the person's residence or employment, pursuant to Section 11836 of the Health and Safety Code.

(B) The person agrees, as a condition of the restriction, to continue satisfactory participation in the program described in subparagraph (A).

(C) The person submits the "Verification of Installation" form described in paragraph (2) of subdivision (e) of Section 23235.

(D) The person agrees to maintain the ignition interlock device as required under subdivision (g) of Section 23246.

(E) The person provides proof of financial responsibility, as defined in Section 16430.

(F) The person pays all applicable reinstatement or reissue fees and any restriction fee required by the department.

(G) The restriction shall remain in effect for the period required in subdivision (f) of Section 23246.

(4) Except as provided in this paragraph, upon a conviction or finding of a violation of Section 23153 punishable under Section 23185, the privilege shall be revoked for a period of three years. The privilege shall not be reinstated until evidence satisfactory to the department establishes that no grounds exist that would authorize the refusal to issue a license, the person gives proof of ability to respond in damages, and the person gives proof satisfactory to the department of successful completion, subsequent to the most recent underlying conviction, of a program described in Section 23186. The department shall advise the person that after the completion of 18 months of the revocation period, the person may apply to the department for a restricted driver's license, subject to the following conditions:

(A) The person has satisfactorily completed, subsequent to the current underlying conviction, either of the following:

(i) A licensed 18-month program pursuant to Section 11836 of the Health and Safety Code.

(ii) The initial 18 months of a licensed 30-month program, if available in the county of the person's residence or employment, pursuant to Section 11836 of the Health and Safety Code, and the person agrees, as a condition of the restriction, to continue satisfactory participation in that 30-month program.

(B) The person submits the "Verification of Installation" form described in paragraph (2) of subdivision (e) of Section 23235.

(C) The person agrees to maintain the ignition interlock device as required under subdivision (g) of Section 23246.

(D) The person provides proof of financial responsibility, as defined in Section 16430.

(E) The person pays all applicable reinstatement or reissue fees and any restriction fee required by the department.

(F) The restriction shall remain in effect for the period required in subdivision (f) of Section 23246.

(5) Except as provided in this paragraph, upon a conviction or finding of a violation of Section 23152 punishable under Section 23170, the privilege shall be revoked for a period of three years. The privilege shall not be reinstated until the person files proof of ability to respond in damages and gives proof satisfactory to the department of successful completion, subsequent to the most recent underlying conviction, of one of the following programs: an 18-month program or, if available in the county of the person's residence or employment, a 30-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, or a program specified in Section 8001 of the Penal Code. The court shall advise the person at the time of sentencing that completion of one of the programs authorized by this paragraph is required in order to become eligible for a California driver's license.

The department shall advise the person that after completion of 18 months of the revocation period, the person may apply to the department for a restricted driver's license, subject to the following conditions:

(A) The person has satisfactorily completed, subsequent to the current underlying conviction, either of the following:

(i) A licensed 18-month program pursuant to Section 11836 of the Health and Safety Code.

(ii) The initial 18 months of a licensed 30-month program, if available in the county of the person's residence or employment, pursuant to Section 11836 of the Health and Safety Code.

The person agrees, as a condition of the restriction, to continue satisfactory participation in the 30-month program.

(B) The person submits the "Verification of Installation" form described in paragraph (2) of subdivision (e) of Section 23235.

(C) The person agrees to maintain the ignition interlock device as required under subdivision (g) of Section 23246.

(D) The person provides proof of financial responsibility, as defined in Section 16430.

(E) Any individual convicted of a violation of Section 23152 punishable under Section 23170 may also, at any time after sentencing, petition the court for referral to an 18-month program or, if available in the county of the person's residence or employment, a 30-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral.

(F) The person pays all applicable reinstatement or reissue fees and any restriction fee required by the department.

(G) The restriction shall remain in effect for the period required in subdivision (f) of Section 23246.

(6) Except as provided in this paragraph, upon a conviction or finding of a violation of Section 23153 punishable under Section 23190, the privilege shall be revoked for a period of five years. The privilege shall not be reinstated until evidence satisfactory to the department establishes that no grounds exist that would authorize the refusal to issue a license, and the person gives proof of ability to respond in damages and proof satisfactory to the department of successful completion, subsequent to the most recent underlying conviction, of one of the following programs: a 30-month program, if available in the county of the person's residence or employment or, if not available, an 18-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, or a program specified in Section 8001 of the Penal Code. The court shall advise the person at the time of sentencing that completion of one of the programs authorized by this paragraph is required in order to become eligible for a California driver's license. The department shall advise the person that after the completion of 30 months of the revocation period, the person may

apply to the department for a restricted driver's license, subject to the following conditions:

(A) The person has satisfactorily completed, subsequent to the current underlying conviction, either of the following:

(i) The initial 18 months of a licensed 30-month program, if available in the county of the person's residence or employment, pursuant to Section 11836 of the Health and Safety Code.

The person agrees, as a condition of the restriction, to continue satisfactory participation in the 30-month program.

(ii) A licensed 18-month program pursuant to Section 11836 of the Health and Safety Code, if a 30-month program is unavailable in the person's county of residence or employment.

(B) The person submits the "Verification of Installation" form described in paragraph (2) of subdivision (e) of Section 23235.

(C) The person agrees to maintain the ignition interlock device as required under subdivision (g) of Section 23246.

(D) The person provides proof of financial responsibility, as defined in Section 16430.

(E) Any individual convicted of a violation of Section 23153 punishable under Section 23190 may also, at any time after sentencing, petition the court for referral to an 18-month program or, if available in the county of the person's residence or employment, a 30-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral.

(F) The person pays all applicable reinstatement or reissue fees and any restriction fee required by the department.

(G) The restriction shall remain in effect for the period required in subdivision (f) of Section 23246.

(7) Except as provided in this paragraph, upon a conviction or finding of a violation of Section 23152 punishable under Section 23175 or 23175.5, the privilege shall be revoked for a period of four years. The privilege shall not be reinstated until evidence satisfactory to the department establishes that no grounds exist that would authorize the refusal to issue a license, and the person gives proof of ability to respond in damages and proof satisfactory to the department of successful completion, subsequent to the most recent underlying conviction, of one of the following programs: an 18-month program or, if available in the county of the person's residence or employment, a 30-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, or a program specified in Section 8001 of the Penal Code. The court shall advise the person at the time of sentencing that completion of one of the programs authorized by this paragraph is required in order to become eligible for a California driver's license. The department shall advise the person that after the completion of 24 months of the revocation period, the person may apply to the

department for a restricted driver's license, subject to the following conditions:

(A) The person has satisfactorily completed, subsequent to the current underlying conviction, either of the following:

(i) A licensed 18-month program pursuant to Section 11836 of the Health and Safety Code.

(ii) The initial 18 months of a licensed 30-month program, if available in the county of the person's residence or employment, pursuant to Section 11836 of the Health and Safety Code. The person agrees, as a condition of the restriction, to continue satisfactory participation in the 30-month program.

(B) The person submits the "Verification of Installation" form described in paragraph (2) of subdivision (e) of Section 23235.

(C) The person agrees to maintain the ignition interlock device as required under subdivision (g) of Section 23246.

(D) The person provides proof of financial responsibility, as defined in Section 16430.

(E) Any individual convicted of a violation of Section 23152 punishable under Section 23175 may also, at any time after sentencing, petition the court for referral to an 18-month program or, if available in the county of the person's residence or employment, a 30-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral.

(F) The person pays all applicable reinstatement or reissue fees and any restriction fee required by the department.

(G) The restriction shall remain in effect for the period required in subdivision (f) of Section 23246.

(8) Upon a conviction or finding of a violation of subdivision (a) of Section 23109 punishable under subdivision (e) of that section, the privilege shall be suspended for a period of 90 days to six months, if and as ordered by the court.

(9) Upon a conviction or finding of a violation of subdivision (a) of Section 23109 punishable under subdivision (f) of that section, the privilege shall be suspended for a period of six months, if the court orders the department to suspend the privilege. The privilege shall not be reinstated until the person gives proof of ability to respond in damages.

(b) For the purpose of paragraphs (2) to (9), inclusive, of subdivision (a), the finding of the juvenile court judge, the juvenile traffic hearing officer, or the referee of a juvenile court of a commission of a violation of Section 23152 or 23153 or subdivision (a) of Section 23109, as specified in subdivision (a) of this section, is a conviction.

(c) Each judge of a juvenile court, juvenile traffic hearing officer, or referee of a juvenile court shall immediately report the findings specified in subdivision (a) to the department.

(d) A conviction of an offense in any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or Canada that, if committed in this state, would be a violation of Section 23152, is a conviction of Section 23152 for purposes of this section, and a conviction of an offense that, if committed in this state, would be a violation of Section 23153, is a conviction of Section 23153 for purposes of this section. The department shall suspend or revoke the privilege to operate a motor vehicle pursuant to this section upon receiving notice of that conviction.

SEC. 7. Section 13352.4 of the Vehicle Code is amended to read:

13352.4. (a) The department shall require a person upon whom the court has imposed the condition of probation required by subdivision (b) of Section 23161 to submit proof of the satisfactory completion of a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code or of a program defined in Section 8001 of the Penal Code, within a time period set by the department, beginning from the date of a conviction or a finding by a court of a violation of Section 23152.

(b) The department shall suspend the privilege to drive of any person who is not in compliance with subdivision (a).

(c) The department may suspend the privilege to drive of any person for failure to file proof of financial responsibility when the person has been ordered by the court to do so. The suspension shall remain in effect until adequate proof of financial responsibility is filed with the department by the person.

(d) The department shall not restore the privilege to operate a motor vehicle after a suspension pursuant to subdivision (b) until the department receives proof of the completion of a program pursuant to subdivision (a) that the department finds satisfactory.

(e) This section shall become operative on January 1, 1995.

SEC. 8. Section 13352.5 of the Vehicle Code is repealed.

SEC. 9. Section 13352.5 is added to the Vehicle Code, to read:

13352.5. (a) The department shall issue a restricted driver's license to a person granted probation under the conditions described in subdivision (b) of Section 23166 instead of suspending that person's license, if the person meets all of the following requirements:

(1) Submits proof of enrollment in, or completion of, a drug and alcohol treatment program described in paragraph (4) of subdivision (b) of Section 23166.

(2) Submits proof of financial responsibility, as described in Section 16430.

(3) Pays all applicable reinstatement or reissue fees and any restriction fee required by the department.

(b) The restriction of the driving privilege shall become effective when the department receives all of the documents and fees required under subdivision (a) and shall remain effective for the period required under Section 23166.

(c) The restriction of the driving privilege shall be limited to the hours necessary for driving to and from the place of employment, driving during the course of employment, and driving to and from activities required in the treatment program.

(d) Whenever the driving privilege is restricted under this section, proof of financial responsibility, as defined in Section 16430, shall be maintained for three years. If the person does not maintain that proof of financial responsibility at any time during the restriction, the driving privilege shall be suspended until proof pursuant to Section 16484 is received by the department.

(e) The restriction imposed under this section may be removed when the person presents evidence satisfactory to the department that the person has completed the drug and alcohol treatment program.

(f) The department shall suspend the privilege to drive under paragraph (3) of subdivision (a) of Section 13352 upon receipt of notification from the treatment program that the person has failed to comply with the program requirements.

(g) After completion of 12 months of the suspension or probation period, the offender may apply to the department for a restricted driver's license, subject to the conditions specified in paragraph (3) of subdivision (a) of Section 13352.

SEC. 10. Section 14601.2 of the Vehicle Code is amended to read:

14601.2. (a) No person shall drive a motor vehicle at any time when that person's driving privilege is suspended or revoked for a conviction of a violation of Section 23152 or 23153 if the person so driving has knowledge of the suspension or revocation.

(b) Except in full compliance with the restriction, no person shall drive a motor vehicle at any time when that person's driving privilege is restricted pursuant to Article 2 (commencing with Section 23152) of Chapter 12 of Division 11, if the person so driving has knowledge of the restriction.

(c) Knowledge of suspension or revocation of the driving privilege shall be conclusively presumed if mailed notice has been given by the department to the person pursuant to Section 13106. Knowledge of restriction of the driving privilege shall be presumed if notice has been given by the court to the person. The presumption established by this subdivision is a presumption affecting the burden of proof.

(d) Any person convicted of a violation of this section shall be punished as follows:

(1) Upon a first conviction, by imprisonment in the county jail for not less than 10 days or more than six months and by a fine of not less than three hundred dollars ($300) or more than one thousand dollars ($1,000), unless the person has been designated an habitual traffic offender under subdivision (b) of Section 23170, subdivision (b) of Section 23175, or subdivision (b) of Section 23175.5, in which case the

person, in addition, shall be sentenced as provided in paragraph (3) of subdivision (e) of Section 14601.3.

(2) If the offense occurred within five years of a prior offense that resulted in a conviction of a violation of this section or Section 14601, 14601.1, or 14601.5, by imprisonment in the county jail for not less than 30 days or more than one year and by a fine of not less than five hundred dollars ($500) or more than two thousand dollars ($2,000), unless the person has been designated an habitual traffic offender under subdivision (b) of Section 23170 or subdivision (b) of Section 23175, in which case the person, in addition, shall be sentenced as provided in paragraph (3) of subdivision (e) of Section 14601.3.

(e) If any person is convicted of a first offense under this section and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for at least 10 days.

(f) If the offense occurred within five years of a prior offense that resulted in a conviction of a violation of this section or Section 14601, 14601.1, or 14601.5 and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for at least 30 days.

(g) If any person is convicted of a second or subsequent offense that results in a conviction of this section within seven years, but over five years, of a prior offense that resulted in a conviction of a violation of this section or Section 14601, 14601.1, or 14601.5 and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for at least 10 days.

(h) Pursuant to Section 23246, the court shall require any person convicted of a violation of this section to install a certified ignition interlock device on any vehicle the person owns or operates.

(i) Nothing in this section prohibits a person who is participating in, or has completed, an alcohol or drug rehabilitation program from driving a motor vehicle that is owned or utilized by the person's employer, during the course of employment on private property that is owned or utilized by the employer, except an offstreet parking facility as defined in subdivision (c) of Section 12500.

SEC. 11. Section 23160 of the Vehicle Code is amended to read:

23160. (a) If any person is convicted of a first violation of Section 23152, that person shall be punished by imprisonment in the county jail for not less than 96 hours, at least 48 hours of which shall be continuous, nor more than six months and by a fine of not less than three hundred ninety dollars ($390), nor more than one thousand dollars ($1,000).

(b) The court shall order that any person punished under subdivision (a), who is to be punished by imprisonment in the county jail, be imprisoned on days other than days of regular employment of the person, as determined by the court. If the court determines that 48 hours of continuous imprisonment would interfere with the person's work schedule, the court shall allow the person to serve the

imprisonment whenever the person is normally scheduled for time off from work. The court may make this determination based upon a representation from the defendant's attorney or upon an affidavit or testimony from the defendant.

(c) Except as provided in paragraph (2) of subdivision (a) of Section 23161, the person's privilege to operate a motor vehicle shall be suspended by the Department of Motor Vehicles pursuant to paragraph (1) of subdivision (a) of Section 13352.

SEC. 12. Section 23161 of the Vehicle Code is amended to read:

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

(1) Be confined in the county jail for at least 48 hours but not more than six months, and pay a fine of at least three hundred ninety dollars ($390), but not more than one thousand dollars ($1,000). Except as provided in paragraph (2), the person's privilege to operate a motor vehicle shall be suspended by the Department of Motor Vehicles pursuant to paragraph (1) of subdivision (a) of Section 13352.

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

(3) If the court elects to order a 90-day restriction as provided for in paragraph (2), the court shall order that the restriction commence on the date of the reinstatement by the Department of Motor Vehicles of the person's privilege to operate a motor vehicle. If a suspension was imposed pursuant to Section 13353.2, the person shall be advised by the court of all of the following matters:

(A) The person's restricted driver's license does not allow the person to operate a motor vehicle unless and until the suspension under Section 13353.2 has either been served to completion or set aside, and his or her license has been reinstated.

(B) The restriction of the driver's license ordered by the court shall commence upon the reinstatement of the privilege to operate a motor vehicle.

(b) Except as provided in subdivision (c), in any county where the board of supervisors has approved, and the State Department of Alcohol and Drug Programs has licensed, a program or programs

described in Section 11837.3 of the Health and Safety Code, the court shall also impose as a condition of probation that the driver shall enroll and participate in, and successfully complete, an alcohol and other drug education and counseling program, licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, in the driver's county of residence or employment, as designated by the court.

(c) (1) The court shall revoke the person's probation pursuant to Section 23207, except for good cause shown, for the failure to enroll in, participate in, or complete a program specified in subdivision (b).

(2) The court, in establishing reporting requirements, shall consult with the county alcohol program administrator. The county alcohol program administrator shall coordinate the reporting requirements with the department and with the State Department of Alcohol and Drug Programs. That reporting shall ensure that all persons who, after being ordered to attend and complete a program, may be identified for either (A) failure to enroll in, or failure to successfully complete, the program, or (B) successful completion of the program as ordered.

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

SEC. 13. Section 23166 of the Vehicle Code is amended to read:

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

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

(b) All of the following:

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

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

(3) Have the privilege to operate a motor vehicle be restricted by the Department of Motor Vehicles pursuant to Section 13352.5, unless the offense occurred in a vehicle requiring a driver with a class A or class B driver's license or with an endorsement prescribed in Section 15278.

(4) Either of the following:

(A) Enroll and participate, for at least 18 months subsequent to the date of the underlying violation and in a manner satisfactory to the court, in a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, as designated by the court. The person shall complete the entire program subsequent to, and shall not be given any credit for any program activities completed prior to, the date of the current violation. The program shall provide for persons who cannot afford the program fee pursuant to paragraph (2) of subdivision (b) of Section 11837.4 of the Health and Safety Code in order to enable those persons to participate.

(B) Enroll and participate, for at least 30 months subsequent to the date of the underlying violation and in a manner satisfactory to the court, in a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code. The person shall complete the entire program subsequent to, and shall not be given any credit for any program activities completed prior to, the date of the current violation.

SEC. 13.5. Section 23166 of the Vehicle Code is amended to read:

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

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

(b) All of the following:

(1) Be confined in the county jail for at least 96 hours, but not more than one year. A sentence of 96 hours of confinement shall be served in two increments consisting of a continuous 48 hours each. The two 48-hour increments may be served nonconsecutively.

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

(3) Have the privilege to operate a motor vehicle be restricted by the Department of Motor Vehicles pursuant to Section 13352.5, unless the offense occurred in a vehicle requiring a driver with a class A or class B driver's license or with an endorsement prescribed in Section 15278.

(4) Either of the following:

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

entire program subsequent to, and shall not be given any credit for any program activities completed prior to, the date of the current violation. The program shall provide for persons who cannot afford the program fee pursuant to paragraph (2) of subdivision (b) of Section 11837.4 of the Health and Safety Code in order to enable those persons to participate.

(B) Enroll and participate, for at least 30 months subsequent to the date of the underlying violation and in a manner satisfactory to the court, in a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code. The person shall complete the entire program subsequent to, and shall not be given any credit for any program activities completed prior to, the date of the current violation.

SEC. 14. Section 23167 of the Vehicle Code is repealed.

SEC. 15. Section 23186 of the Vehicle Code is amended to read:

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

(a) Be confined in the county jail for at least 120 days and pay a fine of at least three hundred ninety dollars ($390), but not more than five thousand dollars ($5,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (4) of subdivision (a) of Section 13352.

(b) All of the following:

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

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

(3) Have the privilege to operate a motor vehicle revoked by the Department of Motor Vehicles under paragraph (4) of subdivision (a) of Section 13352.

(4) Either of the following:

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

(B) Enroll and participate, for at least 30 months subsequent to the date of the underlying violation and in a manner satisfactory to the

court, in a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, if available in the county of the person's residence or employment. The person shall complete the entire program subsequent to, and shall not be given any credit for program activities completed prior to, the date of the current violation.

SEC. 16. Section 23187 of the Vehicle Code is repealed.

SEC. 17. Section 23203 of the Vehicle Code is amended to read:

23203. If a person is placed on probation pursuant to this article, the court shall promptly notify the Department of Motor Vehicles of the probation and probationary term and conditions in a manner prescribed by the department. The department shall place the fact of probation and the probationary term and conditions on the person's records in the department.

SEC. 18. Section 23204 of the Vehicle Code is amended to read:

23204. If a person's privilege to operate a motor vehicle is required or ordered to be suspended or revoked by the Department of Motor Vehicles pursuant to other provisions of this code upon the conviction of an offense of this article, that person shall surrender each and every operator's license of that person to the court upon conviction. The court shall transmit the license or licenses required to be suspended or revoked to the Department of Motor Vehicles pursuant to Section 13550, and the court shall notify the department.

This section does not apply to an administrative proceeding by the Department of Motor Vehicles to suspend or revoke the driving privilege of any person pursuant to other provisions of law.

SEC. 19. Section 23235 of the Vehicle Code is amended to read:

23235. (a) The Department of Motor Vehicles shall certify or cause to be certified ignition interlock devices required by this article and publish a list of approved devices.

(b) The Department of Motor Vehicles shall utilize information from an independent laboratory to certify ignition interlock devices on or off the premises of the manufacturer or manufacturer's agent, in accordance with the guidelines. The cost of certification shall be borne by the manufacturers of interlock ignition devices. If the certification of a device is suspended or revoked, the manufacturer of the device shall be responsible for, and shall bear the cost of, the removal of the device and the replacement of a certified device of the manufacturer or another manufacturer.

(c) No model of ignition interlock device shall be certified unless it meets the accuracy requirements and specifications provided in the guidelines adopted by the National Highway Traffic Safety Administration.

(d) All manufacturers of ignition interlock devices that meet the requirements of subdivision (c) and are certified in a manner approved by the Department of Motor Vehicles, who intend to market the devices in this state, first shall apply to the Department of Motor Vehicles on forms provided by that department. The

application shall be accompanied by a fee in an amount not to exceed the amount necessary to cover the costs incurred by the Department of Motor Vehicles in carrying out this section.

(e) The Department of Motor Vehicles shall ensure that standard forms and procedures are developed for documenting decisions and compliance and communicating results to relevant agencies. These forms shall include all of the following:

(1) An "Option to Install," to be sent by the Department of Motor Vehicles to repeat offenders along with the mandatory order of suspension or revocation. This shall include the alternatives available for early license reinstatement with the installation of an ignition interlock device and shall be accompanied by a toll-free telephone number for each manufacturer of a certified ignition interlock device. Information regarding approved installation locations shall be provided to drivers by manufacturers with ignition interlock devices that have been certified in accordance with this section.

(2) A "Verification of Installation" form to be returned to the Department of Motor Vehicles by the reinstating offender upon application for reinstatement. Copies shall be provided for the manufacturer or the manufacturer's agent.

(3) A "Notice of Noncompliance" form and procedures to ensure continued use of the interlock device during the restriction period and to ensure compliance with maintenance requirements. The maintenance period shall be standardized at 60 days to maximize monitoring checks for equipment tampering.

(f) Every manufacturer and manufacturer's agent certified by the Department of Motor Vehicles to provide ignition interlock devices shall adopt fee schedules that provide for the payment of the costs of the device by applicants in amounts commensurate with their ability to pay.

SEC. 20. The heading of Article 4.5 (commencing with Section 23246) of Chapter 12 of Division 11 of the Vehicle Code is amended to read:

Article 4.5. Installation of Ignition Interlock Devices

SEC. 21. Section 23246 of the Vehicle Code is amended to read:

23246. (a) In addition to any other provisions of law, the court may require that the Department of Motor Vehicles prohibit any person who is convicted of a first offense violation of Section 23152 or Section 23153 from operating a motor vehicle unless that vehicle is equipped with a functioning, certified ignition interlock device as provided in this article. The court shall give heightened consideration to applying this sanction to first offense violators with 0.20 percent or more, by weight, of alcohol in his or her blood at arrest, or with two or more prior moving traffic violations, or of persons who refused the chemical tests at arrest. If the court orders

the ignition interlock restriction, the term shall be determined by the court for a period not to exceed three years.

(b) The court shall require any person who is convicted of a violation of Section 14601.2 to install an ignition interlock device on any vehicle that the person owns or operates for a period not to exceed three years or until the person's driving privilege is reinstated by the Department of Motor Vehicles.

(c) The court shall include on the abstract of conviction or violation submitted to the Department of Motor Vehicles under Section 1803 or 1816, the requirement for the use of a certified ignition interlock device. The records of the department shall reflect mandatory use of the device for the term ordered by the court.

(d) The court shall advise the person that installation of an ignition interlock device on a vehicle does not allow the person to drive without a valid driver's license.

(e) The court shall monitor the installation and maintenance of any ignition interlock device restriction ordered pursuant to subdivision (a) or (b). If any person fails to comply with the court order, the court shall give notice of the fact to the department pursuant to Section 40509.1.

(f) (1) Pursuant to Section 13352, if any person is convicted of a violation of Section 23152 or 23153, and the offense occurred within seven years of one or more separate violations of Section 23152 or 23153 that resulted in a conviction, the person may apply to the Department of Motor Vehicles for a restricted driver's license pursuant to Section 13352 that prohibits the person from operating a motor vehicle unless that vehicle is equipped with a functioning ignition interlock device, certified pursuant to Section 23235. The restriction shall remain in effect for at least the remaining period of the original suspension or revocation and until all reinstatement requirements in Section 13352 are met.

(2) Pursuant to subdivision (g), the Department of Motor Vehicles shall immediately suspend the privilege to operate a motor vehicle of any person who attempts to remove, bypass, or tamper with the device, or who fails three or more times to comply with any requirement for the maintenance or calibration of the ignition interlock device ordered pursuant to Section 13352. The privilege shall remain suspended for the remaining period of the originating suspension or revocation and until all reinstatement requirements in Section 13352 are met.

(g) Any person whose driving privilege is restricted by the court pursuant to this section or by the Department of Motor Vehicles pursuant to Section 13352 shall arrange for each vehicle with an ignition interlock device to be serviced by the installer at least once every 60 days in order for the installer to recalibrate the device and monitor the operation of the device. The installer shall notify the Department of Motor Vehicles or the court, as appropriate, if the device indicates that the person has attempted to remove, bypass, or

tamper with the device, or if the person fails three or more times to comply with any requirement for the maintenance or calibration of the ignition interlock device. There is no obligation on the part of the installer to notify the department or the court if the person has complied with all of the requirements of this article.

(h) Nothing in this section permits a person to drive without a valid driver's license.

(i) The Department of Motor Vehicles shall include information along with the order of suspension or revocation for repeat offenders informing them that after a specified period of suspension or revocation has been completed, the person may either install an ignition interlock device on any vehicle that the person owns or operates or remain with a suspended or revoked driver's license.

(j) Pursuant to subdivision (a), out-of-state residents who otherwise would qualify for an ignition interlock restricted license in California shall be prohibited from operating a motor vehicle in California unless that vehicle is equipped with a functioning ignition interlock device. No ignition interlock device is required to be installed on any vehicle owned by the defendant that is not driven in California.

(k) If a person has a medical problem that does not permit the person to breathe with sufficient strength to activate the device, then that person shall only have the suspension option.

(*l*) This article does not restrict a court from requiring installation of an ignition interlock device for any persons to whom subdivision (a) does not apply.

(m) For purposes of this section, "vehicle" does not include a motorcycle until the state certifies an ignition interlock device that can be installed on a motorcycle. However, a court shall order a person subject to this section not to operate a motorcycle for the duration of the ignition interlock restriction period.

(n) For purposes of this section, "owned" means solely owned or owned in conjunction with another person or legal entity. For purposes of this section, "operates" includes operating vehicles that are not owned by the person subject to this section.

SEC. 22. Section 23247 of the Vehicle Code is amended to read:

23247. (a) It is unlawful for a person to knowingly rent, lease, or lend a motor vehicle to another person known to have had his or her driving privilege restricted as provided in Section 13352 or 23246, unless the vehicle is equipped with a functioning, certified ignition interlock device. Any person, whose driving privilege is restricted pursuant to Section 13352 or 23246 shall notify any other person who rents, leases, or loans a motor vehicle to him or her of the driving restriction imposed under that section.

(b) It is unlawful for any person whose driving privilege is restricted pursuant to Section 13352 or 23246 to request or solicit any other person to blow into an ignition interlock device or to start a

motor vehicle equipped with the device for the purpose of providing the person so restricted with an operable motor vehicle.

(c) It is unlawful to blow into an ignition interlock device or to start a motor vehicle equipped with the device for the purpose of providing an operable motor vehicle to a person whose driving privilege is restricted pursuant to Section 13352 or 23246.

(d) It is unlawful to tamper with, or circumvent the operation of, an ignition interlock device.

(e) It is unlawful for any person whose driving privilege is restricted pursuant to Section 13352 or 23246 to operate any vehicle not equipped with a functioning ignition interlock device.

(f) Any person convicted of a violation of this section shall be punished by imprisonment in the county jail for not more than six months or by a fine of not more than five thousand dollars ($5,000), or by both that fine and imprisonment.

(g) If any person who is restricted pursuant to Section 13352 or 23246 violates subdivision (e), the court shall notify the Department of Motor Vehicles, which shall revoke the person's driving privilege for one year from the date the court finds that the person violated this section.

(h) Notwithstanding any other provision of law, if a vehicle in which an ignition interlock device has been installed is impounded, the manufacturer or installer of the device shall have the right to remove the device from the vehicle during normal business hours. No charge shall be imposed for the removal of the device nor shall the manufacturer or installer be liable for any removal, towing, impoundment, storage, release, or administrative costs or penalties associated with the impoundment. Upon request, the person seeking to remove the device shall present documentation to justify removal of the device from the vehicle. Any damage to the vehicle resulting from the removal of the device is the responsibility of the person removing it.

SEC. 23. Section 23249 of the Vehicle Code is repealed.

SEC. 24. Section 23249 is added to the Vehicle Code, to read:

23249. The Department of Motor Vehicles shall undertake a study and report the findings of that study to the Legislature on or before January 1, 2002, on all of the following matters:

(a) The effectiveness of this article in providing a reduction in the recidivism rate of persons convicted of violations of Section 23152 or 23153, and the reduction in vehicle accidents attributed to the implementation of this article, as revised by the act that added this section.

(b) The overall effectiveness of ignition interlock devices in providing a reduction in the recidivism rate of persons convicted of violations of Section 23152 or 23153, and the reduction in vehicle accidents attributable to the use of those devices.

SEC. 25. Section 23249.1 is added to the Vehicle Code, to read:

23249.1. This article shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2005, deletes or extends that date.

SEC. 26. Section 2.5 of this bill incorporates amendments to Section 11837 of the Health and Safety Code proposed by both this bill and AB 1916. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 11837 of the Health and Safety Code, and (3) this bill is enacted after AB 1916, in which case Section 2 of this bill shall not become operative.

SEC. 26.5. Section 13.5 of this bill incorporates amendments to Section 23166 of the Vehicle Code proposed by both this bill and AB 2674. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 23166 of the Vehicle Code, and (3) this bill is enacted after AB 2674, in which case Section 13 of this bill shall not become operative.

SEC. 27. 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. 28. This act shall become operative on July 1, 1999.

CHAPTER 757

An act to amend Sections 7471, 7476, and 7480 of the Government Code, to amend Section 939.6 of, and to add Sections 1326.1 and 1326.2 to, the Penal Code, relating to crimes.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. Section 7471 of the Government Code is amended to read:

7471. (a) Except in accordance with requirements of Title 11 (commencing with Section 14160) of Part 4 of the Penal Code or Section 7473, 7474, 7475, or 7476, no financial institution, or any

director, officer, employee, or agent of a financial institution, may provide or authorize another to provide to an officer, employee, or agent of a state or local agency or department thereof, any financial records, copies thereof, or the information contained therein, if the director, officer, employee, or agent of the financial institution knows or has reasonable cause to believe that the financial records or information are being requested in connection with a civil or criminal investigation of the customer, whether or not an investigation is being conducted pursuant to formal judicial or administrative proceedings.

(b) This section is not intended to prohibit disclosure of the financial records of a customer or the information contained therein incidental to a transaction in the normal course of business of a financial institution if the director, officer, employee, or agent thereof making or authorizing the disclosure has no reasonable cause to believe that the financial records or the information contained in the financial records so disclosed will be used by a state or local agency or department thereof in connection with an investigation of the customer, whether or not an investigation is being conducted pursuant to formal judicial or administrative proceedings.

(c) This section shall not preclude a financial institution, in its discretion, from initiating contact with, and thereafter communicating with and disclosing customer financial records to, appropriate state or local agencies concerning suspected violation of any law.

(d) A financial institution that refuses to disclose the financial records of a customer, copies thereof, or the information contained therein, in reliance in good faith upon the prohibitions of subdivision (a), or discloses the financial records of a customer, copies thereof, or the information contained therein, in reliance in good faith upon subdivision (c), subdivision (d) of Section 7470, or subdivision (b) of Section 14164 of the Penal Code, shall not be liable to its customer, to a state or local agency, or to any other person for any loss or damage caused in whole or in part by the refusal or the disclosure.

SEC. 2. Section 7476 of the Government Code is amended to read:

7476. (a) Except as provided in subdivisions (b) and (c), an officer, employee, or agent of a state or local agency or department thereof, may obtain financial records under paragraph (4) of subdivision (a) of Section 7470 pursuant to a judicial subpoena or subpoena duces tecum only if:

(1) The subpoena or subpoena duces tecum is issued and served upon the financial institution and the customer in compliance with Chapter 2 (commencing with Section 1985) of Title 3 of Part 4 of the Code of Civil Procedure and the requirements of paragraph (2) or (3) have been met. In the event actual service on the customer has not been made prior to the time the financial records are required to be produced in response to a subpoena or subpoena duces tecum

the court shall, prior to turning over any records to the agency, and upon good cause shown, make a finding that due diligence has been exercised by the agency in its attempt to effect such service; and

(2) Ten days after service have passed without the customer giving notice to the financial institution that the customer has moved to quash the subpoena. If testimony is to be taken, or financial records produced, before a court, the 10-day period provided for in this subdivision may be shortened by the court upon a showing of good cause. The court shall direct that all reasonable measures be taken to notify the customer within the time so shortened. The motion to quash the subpoena must be made, whenever practicable, in the judicial proceeding pending before the court; or

(3) A judge or magistrate in a judicial proceeding to which the customer is a party rules that the subpoena should not be quashed. Nothing in this paragraph is intended to preclude appellate remedies which may be available under existing law.

(b) (1) A deputy district attorney, deputy attorney general, or other person authorized to present evidence to a grand jury in a criminal investigation before a grand jury, or scheduled to be presented to a grand jury, may obtain financial records for return to the grand jury pursuant to a judicial subpoena duces tecum which, upon a written showing to a judge of the superior court that there exists a reasonable inference that a crime within the jurisdiction of the grand jury has been committed and that the financial records sought are reasonably necessary to the jury's investigation of that crime, is personally signed and issued by a judge of the superior court, and meets one of the following:

(A) The subpoena is issued and served upon the financial institution and the customer and 10 days after service have passed without the customer giving notice to the financial institution that the customer has moved to quash the subpoena. In the event actual service on the customer has not been made prior to the time the financial records are required to be produced in response to a subpoena duces tecum the court shall, prior to turning over any records to the grand jury, and upon good cause shown, make a finding that due diligence has been exercised by the grand jury in its attempt to effect this service. The 10-day period provided for in this subparagraph may be shortened by the court upon a showing of good cause. The court shall direct that all reasonable measures be taken to notify the customer within the time so shortened. The motion to quash the subpoena must be made wherever practicable before the judge who issued the subpoena.

(B) A judge rules in a judicial proceeding to which the customer is a party that the subpoena should not be quashed. Nothing in this subparagraph is intended to preclude appellate remedies that may be available under existing law.

(C) A court orders the financial institution and the grand jury to withhold notification to the customer for 30 days from the date of

receipt of the judicial subpoena duces tecum after making a finding upon a written showing that notice to the customer by the financial institution and the grand jury would impede the investigation by the grand jury. The withholding of this notification may be extended for additional 30-day periods up to the end of the term of the grand jury or the filing of a criminal complaint if a court makes a finding upon a written showing, at the time of each extension, that notice to the customer by the financial institution and the grand jury would impede the investigation by the grand jury. Whenever practicable, any application for an extension of time shall be made to the judge who issued the subpoena duces tecum.

(2) For the purpose of this subdivision, an "inference" is a deduction that may be reasonably drawn by the judge of the superior court from facts relevant to the investigation.

(3) If notification was withheld from the customer pursuant to subparagraph (C) of paragraph (1), the state or local agency that made the presentation to the grand jury shall notify the customer in writing after the criminal investigation is terminated without the return of an indictment, or a filing of a criminal complaint. The notice shall specify the financial records that were examined and the reason for this examination. At the time of the notification to the customer, the state or local agency shall notify the financial institution of the notification to its customer. The financial institution shall not have a further obligation to notify its customer of the judicial subpoena duces tecum and the disclosure of records pursuant to the subpoena duces tecum.

(4) Any showing that is required to be made pursuant to this subdivision, as well as the court record of any finding made pursuant to this showing, shall be sealed until one person named in the indictment or the criminal complaint to which the showing related has been arrested, or until the termination of the criminal investigation without the return of an indictment or the filing of a criminal complaint. However, a court may unseal a showing and court record relating thereto on a written showing of good cause and upon service of that showing upon the grand jury and the expiration of 10 days after service without the grand jury giving notice to the court that the jury moves for an in camera hearing regarding the existence of good cause. If notice is given by the grand jury the court shall conduct an in camera hearing upon any terms and with any persons present that the court deems proper. At the conclusion of the in camera hearing, the court, if it finds that good cause exists, may order the showing and court record relating thereto to be unsealed upon any terms that it deems proper.

(c) In any criminal case in which an accusatory pleading is on file charging a violation of Section 476a of the Penal Code, an officer, employee, or agent of a state or local agency or department thereof, may obtain financial records under paragraph (4) of subdivision (a) of Section 7470 pursuant to a judicial subpoena or subpoena duces

tecum to be returned to the court issuing the subpoena or the subpoena duces tecum only if:

(1) The financial records to be produced are of the bank account or accounts as to which the defendant is alleged to have violated Section 476a of the Penal Code;

(2) The subpoena or subpoena duces tecum is issued and served upon the financial institution in compliance with Chapter 2 (commencing with Section 1985) of Title 3 of Part 4 of the Code of Civil Procedure; and

(3) The records are to be produced at a preliminary hearing or trial at which the defendant will have the opportunity to move to quash the subpoena or subpoena duces tecum prior to the disclosure of any information contained within said records, and to move to suppress any portion of the records which the court finds irrelevant to the charges.

SEC. 3. Section 7480 of the Government Code is amended to read:

7480. Nothing in this chapter prohibits any of the following:

(a) The dissemination of any financial information that is not identified with, or identifiable as being derived from, the financial records of a particular customer.

(b) When any police or sheriff's department or district attorney in this state certifies to a bank, credit union, or savings association in writing that a crime report has been filed which involves the alleged fraudulent use of drafts, checks, or other orders drawn upon any bank, credit union, or savings association in this state, the police or sheriff's department or district attorney may request a bank, credit union, or savings association to furnish, and a bank, credit union, or savings association shall supply, a statement setting forth the following information with respect to a customer account specified by the police or sheriff's department or district attorney for a period 30 days prior to, and up to 30 days following, the date of occurrence of the alleged illegal act involving the account:

(1) The number of items dishonored.

(2) The number of items paid that created overdrafts.

(3) The dollar volume of the dishonored items and items paid that created overdrafts and a statement explaining any credit arrangement between the bank, credit union, or savings association and customer to pay overdrafts.

(4) The dates and amounts of deposits and debits and the account balance on these dates.

(5) A copy of the signature and any addresses appearing on a customer's signature card.

(6) The date the account opened and, if applicable, the date the account closed.

(c) The Attorney General, a supervisory agency, the Franchise Tax Board, the State Board of Equalization, the Employment Development Department, the Controller or an inheritance tax

referee when administering the Prohibition of Gift and Death Taxes (Part 8 (commencing with Section 13301) of Division 2 of the Revenue and Taxation Code), a police or sheriff's department or district attorney, a county welfare department when investigating welfare fraud, a county auditor-controller or director of finance when investigating fraud against the county, or the Department of Corporations when conducting investigations in connection with the enforcement of laws administered by the Commissioner of Corporations, from requesting of an office or branch of a financial institution, and the office or branch from responding to a request, as to whether a person has an account or accounts at that office or branch and, if so, any identifying numbers of the account or accounts.

No additional information beyond that specified in this section shall be released to a county welfare department without either the accountholder's written consent or a judicial writ, search warrant, subpoena, or other judicial order.

A county auditor-controller or director of finance who unlawfully discloses information he or she is authorized to request under this subdivision is guilty of the unlawful disclosure of confidential data, a misdemeanor, which shall be punishable as set forth in Section 7485.

(d) The examination by, or disclosure to, any supervisory agency of financial records that relate solely to the exercise of its supervisory function. The scope of an agency's supervisory function shall be determined by reference to statutes that grant authority to examine, audit, or require reports of financial records or financial institutions as follows:

(1) With respect to the Commissioner of Financial Institutions by reference to Division 1 (commencing with Section 99), Division 1.5 (commencing with Section 4800), Division 2 (commencing with Section 5000), Division 5 (commencing with Section 14000), Division 7 (commencing with Section 18000), Division 15 (commencing with Section 31000), and Division 16 (commencing with Section 33000) of the Financial Code.

(2) With respect to the Controller by reference to Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

(3) With respect to the Administrator of Local Agency Security by reference to Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

(e) The disclosure to the Franchise Tax Board of (1) the amount of any security interest a financial institution has in a specified asset of a customer or (2) financial records in connection with the filing or audit of a tax return or tax information return required to be filed by the financial institution pursuant to Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 18 (commencing with Section 38001) of the Revenue and Taxation Code.

(f) The disclosure to the State Board of Equalization of any of the following:

(1) The information required by Sections 6702, 6703, 8954, 8957, 30313, 30315, 32383, 32387, 38502, 38503, 40153, 40155, 41122, 41123.5, 43443, 43444.2, 44144, 45603, 45605, 46404, 46406, 50134, 50136, 55203, 55205, 60404, and 60407 of the Revenue and Taxation Code.

(2) The financial records in connection with the filing or audit of a tax return required to be filed by the financial institution pursuant to Part 1 (commencing with Section 6001), Part 2 (commencing with Section 7301), Part 3 (commencing with Section 8601), Part 13 (commencing with Section 30001), Part 14 (commencing with Section 32001), and Part 17 (commencing with Section 37001) of Division 2 of the Revenue and Taxation Code.

(3) The amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(g) The disclosure to the Controller of the information required by Section 7853 of the Revenue and Taxation Code.

(h) The disclosure to the Employment Development Department of the amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(i) The disclosure by a construction lender, as defined in Section 3087 of the Civil Code, to the Registrar of Contractors, of information concerning the making of progress payments to a prime contractor requested by the registrar in connection with an investigation under Section 7108.5 of the Business and Professions Code.

(j) Upon receipt of a written request from a district attorney referring to a support order pursuant to Section 11475.1 of the Welfare and Institutions Code, a financial institution shall disclose the following information concerning the account or the person named in the request, whom the district attorney shall identify, whenever possible, by social security number:

(1) If the request states the identifying number of an account at a financial institution, the name of each owner of the account.

(2) Each account maintained by the person at the branch to which the request is delivered, and, if the branch is able to make a computerized search, each account maintained by the person at any other branch of the financial institution located in this state.

(3) For each account disclosed pursuant to paragraphs (1) and (2), the account number, current balance, street address of the branch where the account is maintained, and, to the extent available through the branch's computerized search, the name and address of any other person listed as an owner.

Whenever the request prohibits the disclosure, a financial institution shall not disclose either the request or its response, to an owner of the account or to any other person, except the officers and employees of the financial institution who are involved in responding

to the request and to attorneys, auditors, and regulatory authorities who have a need to know in order to perform their duties, and except as disclosure may be required by legal process.

No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information in response to a request pursuant to this subdivision, (B) failing to notify the owner of an account, or complying with a request under this paragraph not to disclose to the owner, the request or disclosure under this subdivision, or (C) failing to discover any account owned by the person named in the request pursuant to a computerized search of the records of the financial institution.

The district attorney may request information pursuant to this subdivision only when the district attorney has received at least one of the following types of physical evidence:

(A) Any of the following, dated within the last three years:

(i) Form 599.

(ii) Form 1099.

(iii) A bank statement.

(iv) A check.

(v) A bank passbook.

(vi) A deposit slip.

(vii) A copy of a federal or state income tax return.

(viii) A debit or credit advice.

(ix) Correspondence that identifies the child support obligor by name, the bank, and the account number.

(x) Correspondence that identifies the child support obligor by name, the bank, and the banking services related to the account of the obligor.

(xi) An asset identification report from a federal agency.

(B) A sworn declaration of the custodial parent during the 12 months immediately preceding the request that the person named in the request has had or may have had an account at an office or branch of the financial institution to which the request is made.

Information obtained by a district attorney pursuant to this subdivision shall be used only for purposes that are directly connected within the administration of the duties of the district attorney pursuant to Section 11475.1 of the Welfare and Institutions Code.

(k) The dissemination of financial information and records pursuant to an order by a judge upon a written ex parte application by a peace officer showing specific and articulable facts that there are reasonable grounds to believe that the records or information sought are relevant and material to an ongoing investigation of a felony violation of Section 186.10 or of any felony subject to the enhancement set forth in Section 186.11. The ex parte application shall specify with particularity the records to be produced, which shall be only those of the individual or individuals who are the subject of the criminal investigation. The ex parte application and any

subsequent judicial order shall be open to the public as a judicial record unless ordered sealed by the court, for a period of 60 days. The sealing of these records may be extended for 60-day periods upon a showing to the court that it is necessary for the continuance of the investigation. Sixty-day extensions may continue for up to one year or until termination of the investigation of the individual or individuals, whichever is sooner. The records ordered to be produced shall be returned to the peace officer applicant or his or her designee within a reasonable time period after service of the order upon the financial institution. Nothing in this subdivision shall preclude the financial institution from notifying a customer of the receipt of the order for production of records unless a court orders the financial institution to withhold notification to the customer upon a finding that the notice would impede the investigation.

Where a court has made an order to withhold notification to the customer under this paragraph, the peace officer or law enforcement agency who obtained the financial information shall notify the customer by delivering a copy of the ex parte order to the customer within 10 days of the termination of the investigation.

No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (1) disclosing information in response to an order pursuant to this subdivision, or (2) complying with an order under this subdivision not to disclose to the customer, the order, or the dissemination of information pursuant to the order.

SEC. 3.5. Section 7480 of the Government Code is amended to read:

7480. Nothing in this chapter prohibits any of the following:

(a) The dissemination of any financial information that is not identified with, or identifiable as being derived from, the financial records of a particular customer.

(b) When any police or sheriff's department or district attorney in this state certifies to a bank, credit union, or savings association in writing that a crime report has been filed that involves the alleged fraudulent use of drafts, checks, or other orders drawn upon any bank, credit union, or savings association in this state, the police or sheriff's department or district attorney may request a bank, credit union, or savings association to furnish, and a bank, credit union, or savings association shall furnish, a statement setting forth the following information with respect to a customer account specified by the police or sheriff's department or district attorney for a period 30 days prior to, and up to 30 days following, the date of occurrence of the alleged illegal act involving the account:

(1) The number of items dishonored.

(2) The number of items paid that created overdrafts.

(3) The dollar volume of the dishonored items and items paid which created overdrafts and a statement explaining any credit arrangement between the bank, credit union, or savings association and customer to pay overdrafts.

(4) The dates and amounts of deposits and debits and the account balance on these dates.

(5) A copy of the signature card, including the signature and any addresses appearing on a customer's signature card.

(6) The date the account opened and, if applicable, the date the account closed.

(7) A bank, credit union, or savings association that provides the requesting party with copies of one or more complete account statements prepared in the regular course of business shall be deemed to be in compliance with paragraphs (1), (2), (3), and (4).

(c) (1) The Attorney General, a supervisory agency, the Franchise Tax Board, the State Board of Equalization, the Employment Development Department, the Controller or an inheritance tax referee when administering the Prohibition of Gift and Death Taxes (Part 8 (commencing with Section 13301) of Division 2 of the Revenue and Taxation Code), a police or sheriff's department or district attorney, a county welfare department when investigating welfare fraud, a county auditor-controller or director of finance when investigating fraud against the county, or the Department of Corporations when conducting investigations in connection with the enforcement of laws administered by the Commissioner of Corporations, from requesting of an office or branch of a financial institution, and the office or branch from responding to a request, as to whether a person has an account or accounts at that office or branch and, if so, any identifying numbers of the account or accounts.

(2) No additional information beyond that specified in this section shall be released to a county welfare department without either the accountholder's written consent or a judicial writ, search warrant, subpoena, or other judicial order.

(3) A county auditor-controller or director of finance who unlawfully discloses information he or she is authorized to request under this subdivision is guilty of the unlawful disclosure of confidential data, a misdemeanor, which shall be punishable as set forth in Section 7485.

(d) The examination by, or disclosure to, any supervisory agency of financial records that relate solely to the exercise of its supervisory function. The scope of an agency's supervisory function shall be determined by reference to statutes that grant authority to examine, audit, or require reports of financial records or financial institutions as follows:

(1) With respect to the Commissioner of Financial Institutions by reference to Division 1 (commencing with Section 99), Division 1.5 (commencing with Section 4800), Division 2 (commencing with Section 5000), Division 5 (commencing with Section 14000), Division 7 (commencing with Section 18000), Division 15 (commencing with Section 31000), and Division 16 (commencing with Section 33000) of the Financial Code.

(2) With respect to the Controller by reference to Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

(3) With respect to the Administrator of Local Agency Security by reference to Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

(e) The disclosure to the Franchise Tax Board of (1) the amount of any security interest that a financial institution has in a specified asset of a customer or (2) financial records in connection with the filing or audit of a tax return or tax information return that are required to be filed by the financial institution pursuant to Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 18 (commencing with Section 38001) of the Revenue and Taxation Code.

(f) The disclosure to the State Board of Equalization of any of the following:

(1) The information required by Sections 6702, 6703, 8954, 8957, 30313, 30315, 32383, 32387, 38502, 38503, 40153, 40155, 41122, 41123.5, 43443, 43444.2, 44144, 45603, 45605, 46404, 46406, 50134, 50136, 55203, 55205, 60404, and 60407 of the Revenue and Taxation Code.

(2) The financial records in connection with the filing or audit of a tax return required to be filed by the financial institution pursuant to Part 1 (commencing with Section 6001), Part 2 (commencing with Section 7301), Part 3 (commencing with Section 8601), Part 13 (commencing with Section 30001), Part 14 (commencing with Section 32001), and Part 17 (commencing with Section 37001) of Division 2 of the Revenue and Taxation Code.

(3) The amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(g) The disclosure to the Controller of the information required by Section 7853 of the Revenue and Taxation Code.

(h) The disclosure to the Employment Development Department of the amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(i) The disclosure by a construction lender, as defined in Section 3087 of the Civil Code, to the Registrar of Contractors, of information concerning the making of progress payments to a prime contractor requested by the registrar in connection with an investigation under Section 7108.5 of the Business and Professions Code.

(j) Upon receipt of a written request from a district attorney referring to a support order pursuant to Section 11475.1 of the Welfare and Institutions Code, a financial institution shall disclose the following information concerning the account or the person named in the request, whom the district attorney shall identify, whenever possible, by social security number:

(1) If the request states the identifying number of an account at a financial institution, the name of each owner of the account.

(2) Each account maintained by the person at the branch to which the request is delivered, and, if the branch is able to make a computerized search, each account maintained by the person at any other branch of the financial institution located in this state.

(3) For each account disclosed pursuant to paragraphs (1) and (2), the account number, current balance, street address of the branch where the account is maintained, and, to the extent available through the branch's computerized search, the name and address of any other person listed as an owner.

(4) Whenever the request prohibits the disclosure, a financial institution shall not disclose either the request or its response, to an owner of the account or to any other person, except the officers and employees of the financial institution who are involved in responding to the request and to attorneys, auditors, and regulatory authorities who have a need to know in order to perform their duties, and except as disclosure may be required by legal process.

(5) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information in response to a request pursuant to this subdivision, (B) failing to notify the owner of an account, or complying with a request under this paragraph not to disclose to the owner, the request or disclosure under this subdivision, or (C) failing to discover any account owned by the person named in the request pursuant to a computerized search of the records of the financial institution.

(6) The district attorney may request information pursuant to this subdivision only when the district attorney has received at least one of the following types of physical evidence:

(A) Any of the following, dated within the last three years:

(i) Form 599.

(ii) Form 1099.

(iii) A bank statement.

(iv) A check.

(v) A bank passbook.

(vi) A deposit slip.

(vii) A copy of a federal or state income tax return.

(viii) A debit or credit advice.

(ix) Correspondence that identifies the child support obligor by name, the bank, and the account number.

(x) Correspondence that identifies the child support obligor by name, the bank, and the banking services related to the account of the obligor.

(xi) An asset identification report from a federal agency.

(B) A sworn declaration of the custodial parent during the 12 months immediately preceding the request that the person named in the request has had or may have had an account at an office or branch of the financial institution to which the request is made.

(7) Information obtained by a district attorney pursuant to this subdivision shall be used only for purposes that are directly connected within the administration of the duties of the district attorney pursuant to Section 11475.1 of the Welfare and Institutions Code.

(k) (1) As provided in paragraph (1) of subdivision (c) of Section 666 of Title 42 of the United States Code, upon receipt of an administrative subpoena on the current federally approved interstate child support enforcement form, as approved by the federal Office of Management and Budget, a financial institution shall provide the information or documents requested by the administrative subpoena.

(2) The administrative subpoena shall refer to the current federal Office of Management and Budget control number and be signed by a person who states that he or she is an authorized agent of a state or county agency responsible for implementing the child support enforcement program set forth in Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code. A financial institution may rely on the statements made in the subpoena and has no duty to inquire into the truth of any statement in the subpoena.

(3) If the person who signs the administrative subpoena directs a financial institution in writing not to disclose either the subpoena or its response to any owner of an account covered by the subpoena, the financial institution shall not disclose the subpoena or its response to any such owner.

(4) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information or providing documents in response to a subpoena pursuant to this subdivision, (B) failing to notify any owner of an account covered by the subpoena or complying with a request not to disclose to the owner, the subpoena or disclosure under this subdivision, or (C) failing to discover any account owned by the person named in the subpoena pursuant to a computerized search of the records of the financial institution.

(*l*) The dissemination of financial information and records pursuant to an order by a judge upon a written ex parte application by a peace officer showing specific and articulable facts that there are reasonable grounds to believe that the records or information sought are relevant and material to an ongoing investigation of a felony violation of Section 186.10 or of any felony subject to the enhancement set forth in Section 186.11. The ex parte application shall specify with particularity the records to be produced, which shall be only those of the individual or individuals who are the subject of the criminal investigation. The ex parte application and any subsequent judicial order shall be open to the public as a judicial record unless ordered sealed by the court, for a period of 60 days. The sealing of these records may be extended for 60-day periods upon a

showing to the court that it is necessary for the continuance of the investigation. Sixty-day extensions may continue for up to one year or until termination of the investigation of the individual or individuals, whichever is sooner. The records ordered to be produced shall be returned to the peace officer applicant or his or her designee within a reasonable time period after service of the order upon the financial institution. Nothing in this subdivision shall preclude the financial institution from notifying a customer of the receipt of the order for production of records unless a court orders the financial institution to withhold notification to the customer upon a finding that the notice would impede the investigation.

Where a court has made an order to withhold notification to the customer under this paragraph, the peace officer or law enforcement agency who obtained the financial information shall notify the customer by delivering a copy of the ex parte order to the customer within 10 days of the termination of the investigation.

No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (1) disclosing information in response to an order pursuant to this subdivision, or (2) complying with an order under this subdivision not to disclose to the customer, the order, or the dissemination of information pursuant to the order.

SEC. 4. Section 939.6 of the Penal Code is amended to read:

939.6. (a) Subject to subdivision (b), in the investigation of a charge, the grand jury shall receive no other evidence than what is:

(1) Given by witnesses produced and sworn before the grand jury;

(2) Furnished by writings, material objects, or other things presented to the senses; or

(3) Contained in a deposition that is admissible under subdivision 3 of Section 686.

(b) Except as provided in subdivision (c), the grand jury shall not receive any evidence except that which would be admissible over objection at the trial of a criminal action, but the fact that evidence that would have been excluded at trial was received by the grand jury does not render the indictment void where sufficient competent evidence to support the indictment was received by the grand jury.

(c) Notwithstanding Section 1200 of the Evidence Code, as to the evidence relating to the foundation for admissibility into evidence of documents, exhibits, records, and other items of physical evidence, the evidence to support the indictment may be based in whole or in part upon the sworn testimony of a law enforcement officer relating the statement of a declarant made out of court and offered for the truth of the matter asserted. Any law enforcement officer testifying as to a hearsay statement pursuant to this subdivision shall have either five years of law enforcement experience or have completed a training course certified by the Commission on Peace Officer Standards and Training that includes training in the investigation and reporting of cases and testifying at preliminary hearings.

SEC. 5. Section 1326.1 is added to the Penal Code, to read:

1326.1. (a) An order for the production of utility records in whatever form and however stored shall be issued by a judge only upon a written ex parte application by a peace officer showing specific and articulable facts that there are reasonable grounds to believe that the records or information sought are relevant and material to an ongoing investigation of a felony violation of Section 186.10 or of any felony subject to the enhancement set forth in Section 186.11. The ex parte application shall specify with particularity the records to be produced, which shall be only those of the individual or individuals who are the subject of the criminal investigation. The ex parte application and any subsequent judicial order shall be open to the public as a judicial record unless ordered sealed by the court, for a period of 60 days. The sealing of these records may be extended for 60-day periods upon a showing to the court that it is necessary for the continuance of the investigation. Sixty-day extensions may continue for up to one year or until termination of the investigation of the individual or individuals, whichever is sooner. The records ordered to be produced shall be returned to the peace officer applicant or his or her designee within a reasonable time period after service of the order upon the holder of the utility records.

(b) As used in subdivision (a), "utility records" include, but are not limited to, subscriber information, telephone or pager number information, toll call records, call detail records, automated message accounting records, billing statements, payment records, and applications for service in the custody of companies engaged in the business of providing telephone, pager, electric, gas, propane, water, or other like services. "Utility records" do not include the installation of, or the data collected from the installation of pen registers or trap-tracers, nor the contents of a wire or electronic communication.

(c) Nothing in this section shall preclude the holder of the utility records from notifying a customer of the receipt of the order for production of records unless a court orders the holder of the utility records to withhold notification to the customer upon a finding that this notice would impede the investigation. Where a court has made an order to withhold notification to the customer under this subdivision, the peace officer or law enforcement agency who obtained the utility records shall notify the customer by delivering a copy of the ex parte order to the customer within 10 days of the termination of the investigation.

(d) No holder of utility records, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information in response to an order pursuant to this section, or (B) complying with an order under this section not to disclose to the customer, the order or the dissemination of information pursuant to the order.

(e) Nothing in this section shall preclude the holder of the utility records from voluntarily disclosing information or providing records to law enforcement upon request.

(f) Utility records released pursuant to this section shall be used only for the purpose of criminal investigations and prosecutions.

SEC. 6. Section 1326.2 is added to the Penal Code, to read:

1326.2. (a) An order for the production of escrow or title records in whatever form and however stored shall be issued by a judge only upon a written ex parte application by a peace officer showing specific and articulable facts that there are reasonable grounds to believe that the records or information sought are relevant and material to an ongoing investigation of a felony violation of Section 186.10 or of any felony subject to the enhancement set forth in Section 186.11. The ex parte application shall specify with particularity the records to be produced, which shall be only those of the individual or individuals who are the subject of the criminal investigation. The ex parte application and any subsequent judicial order shall be open to the public as a judicial record unless ordered sealed by the court, for a period of 60 days. The sealing of these records may be extended for 60-day periods upon a showing to the court that it is necessary for the continuance of the investigation. Sixty-day extensions may continue for up to one year or until termination of the investigation of the individual or individuals, whichever is sooner. The records ordered to be produced shall be returned to the peace officer applicant or his or her designee within a reasonable time period after service of the order upon the holder of the escrow or title records.

(b) As used in subdivision (a), "holder of escrow or title records" means a title insurer that engages in the "business of title insurance," as defined by Section 12340.3 of the Insurance Code, an underwritten title company, or an escrow company.

(c) Nothing in this section shall preclude the holder of the escrow or title records from notifying a customer of the receipt of the order for production of records unless a court orders the holder of the escrow or title records to withhold notification to the customer upon a finding that this notice would impede the investigation. Where a court has made an order to withhold notification to the customer under this subdivision, the peace officer or law enforcement agency who obtained the escrow or title records shall notify the customer by delivering a copy of the ex parte order to the customer within 10 days of the termination of the investigation.

(d) No holder of escrow or title records, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information in response to an order pursuant to this section, or (B) complying with an order under this section not to disclose to the customer, the order or the dissemination of information pursuant to the order.

(e) Nothing in this section shall preclude the holder of the escrow or title records from voluntarily disclosing information or providing records to law enforcement upon request.

SEC. 7. Section 3.5 of this bill incorporates amendments to Section 7480 of the Government Code proposed by both this bill and

AB 2452. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 7480 of the Government Code, and (3) this bill is enacted after AB 2452, 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 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 758

An act to amend Section 647 of the Penal Code, and to amend Sections 13201.5 and 22659.5 of the Vehicle Code, relating to prostitution.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. Section 647 of the Penal Code is amended to read:

647. Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:

(a) Who solicits anyone to engage in or who engages in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view.

(b) Who solicits or who agrees to engage in or who engages in any act of prostitution. A person agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation to so engage, regardless of

whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution. No agreement to engage in an act of prostitution shall constitute a violation of this subdivision unless some act, in addition to the agreement, is done within this state in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act. As used in this subdivision, "prostitution" includes any lewd act between persons for money or other consideration.

(c) Who accosts other persons in any public place or in any place open to the public for the purpose of begging or soliciting alms.

(d) Who loiters in or about any toilet open to the public for the purpose of engaging in or soliciting any lewd or lascivious or any unlawful act.

(e) Who loiters or wanders upon the streets or from place to place without apparent reason or business and who refuses to identify himself or herself and to account for his or her presence when requested by any peace officer so to do, if the surrounding circumstances would indicate to a reasonable person that the public safety demands this identification.

(f) Who is found in any public place under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, controlled substance, or toluene, in such a condition that he or she is unable to exercise care for his or her own safety or the safety of others, or by reason of his or her being under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, or toluene, interferes with or obstructs or prevents the free use of any street, sidewalk, or other public way.

(g) When a person has violated subdivision (f) of this section, a peace officer, if he or she is reasonably able to do so, shall place the person, or cause him or her to be placed, in civil protective custody. The person shall be taken to a facility, designated pursuant to Section 5170 of the Welfare and Institutions Code, for the 72-hour treatment and evaluation of inebriates. A peace officer may place a person in civil protective custody with that kind and degree of force which would be lawful were he or she effecting an arrest for a misdemeanor without a warrant. No person who has been placed in civil protective custody shall thereafter be subject to any criminal prosecution or juvenile court proceeding based on the facts giving rise to this placement. This subdivision shall not apply to the following persons:

(1) Any person who is under the influence of any drug, or under the combined influence of intoxicating liquor and any drug.

(2) Any person who a peace officer has probable cause to believe has committed any felony, or who has committed any misdemeanor in addition to subdivision (f) of this section.

(3) Any person who a peace officer in good faith believes will attempt escape or will be unreasonably difficult for medical personnel to control.

(h) Who loiters, prowls, or wanders upon the private property of another, at any time, without visible or lawful business with the owner or occupant. As used in this subdivision, "loiter" means to delay or linger without a lawful purpose for being on the property and for the purpose of committing a crime as opportunity may be discovered.

(i) Who, while loitering, prowling, or wandering upon the private property of another, at any time, peeks in the door or window of any inhabited building or structure, without visible or lawful business with the owner or occupant.

(j) Who lodges in any building, structure, vehicle, or place, whether public or private, without the permission of the owner or person entitled to the possession or in control of it.

(k) Anyone who looks through a hole or opening, into, or otherwise views, by means of any instrumentality, including, but not limited to, a periscope, telescope, binoculars, camera, or camcorder, the interior of a bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which the occupant has a reasonable expectation of privacy, with the intent to invade the privacy of a person or persons inside. This subdivision shall not apply to those areas of a private business used to count currency or other negotiable instruments.

In any accusatory pleading charging a violation of subdivision (b), if the defendant has been once previously convicted of a violation of that subdivision, the previous conviction shall be charged in the accusatory pleading. If the previous conviction is found to be true by the jury, upon a jury trial, or by the court, upon a court trial, or is admitted by the defendant, the defendant shall be imprisoned in a county jail for a period of not less than 45 days and shall not be eligible for release upon completion of sentence, on probation, on parole, on work furlough or work release, or on any other basis until he or she has served a period of not less than 45 days in a county jail. In all cases in which probation is granted, the court shall require as a condition thereof that the person be confined in a county jail for at least 45 days. In no event does the court have the power to absolve a person who violates this subdivision from the obligation of spending at least 45 days in confinement in a county jail.

In any accusatory pleading charging a violation of subdivision (b), if the defendant has been previously convicted two or more times of a violation of that subdivision, each such previous conviction shall be charged in the accusatory pleading. If two or more of these previous convictions are found to be true by the jury, upon a jury trial, or by the court, upon a court trial, or are admitted by the defendant, the defendant shall be imprisoned in a county jail for a period of not less than 90 days and shall not be eligible for release upon completion of sentence, on probation, on parole, on work furlough or work release, or on any other basis until he or she has served a period of not less than 90 days in a county jail. In all cases in which probation is granted, the

court shall require as a condition thereof that the person be confined in a county jail for at least 90 days. In no event does the court have the power to absolve a person who violates this subdivision from the obligation of spending at least 90 days in confinement in a county jail.

In addition to any punishment prescribed by this section, a court may suspend, for not more than 30 days, the privilege of the person to operate a motor vehicle pursuant to Section 13201.5 of the Vehicle Code for any violation of subdivision (b) that was committed within 1,000 feet of a private residence and with the use of a vehicle. In lieu of the suspension, the court may order a person's privilege to operate a motor vehicle restricted, for not more than six months, to necessary travel to and from the person's place of employment or education. If driving a motor vehicle is necessary to perform the duties of the person's employment, the court may also allow the person to drive in that person's scope of employment.

SEC. 1.5. Section 647 of the Penal Code is amended to read:

647. Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:

(a) Who solicits anyone to engage in or who engages in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view.

(b) Who solicits or who agrees to engage in or who engages in any act of prostitution. A person agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution. No agreement to engage in an act of prostitution shall constitute a violation of this subdivision unless some act, in addition to the agreement, is done within this state in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act. As used in this subdivision, "prostitution" includes any lewd act between persons for money or other consideration.

(c) Who accosts other persons in any public place or in any place open to the public for the purpose of begging or soliciting alms.

(d) Who loiters in or about any toilet open to the public for the purpose of engaging in or soliciting any lewd or lascivious or any unlawful act.

(e) Who loiters or wanders upon the streets or from place to place without apparent reason or business and who refuses to identify himself or herself and to account for his or her presence when requested by any peace officer so to do, if the surrounding circumstances would indicate to a reasonable person that the public safety demands this identification.

(f) Who is found in any public place under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, controlled substance, or toluene, in such a condition that he or she is unable to exercise care

for his or her own safety or the safety of others, or by reason of his or her being under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, or toluene, interferes with or obstructs or prevents the free use of any street, sidewalk, or other public way.

(g) When a person has violated subdivision (f) of this section, a peace officer, if he or she is reasonably able to do so, shall place the person, or cause him or her to be placed, in civil protective custody. The person shall be taken to a facility, designated pursuant to Section 5170 of the Welfare and Institutions Code, for the 72-hour treatment and evaluation of inebriates. A peace officer may place a person in civil protective custody with that kind and degree of force which would be lawful were he or she effecting an arrest for a misdemeanor without a warrant. No person who has been placed in civil protective custody shall thereafter be subject to any criminal prosecution or juvenile court proceeding based on the facts giving rise to this placement. This subdivision shall not apply to the following persons:

(1) Any person who is under the influence of any drug, or under the combined influence of intoxicating liquor and any drug.

(2) Any person who a peace officer has probable cause to believe has committed any felony, or who has committed any misdemeanor in addition to subdivision (f) of this section.

(3) Any person who a peace officer in good faith believes will attempt escape or will be unreasonably difficult for medical personnel to control.

(h) Who loiters, prowls, or wanders upon the private property of another, at any time, without visible or lawful business with the owner or occupant. As used in this subdivision, "loiter" means to delay or linger without a lawful purpose for being on the property and for the purpose of committing a crime as opportunity may be discovered.

(i) Who, while loitering, prowling, or wandering upon the private property of another, at any time, peeks in the door or window of any inhabited building or structure, without visible or lawful business with the owner or occupant.

(j) Who lodges in any building, structure, vehicle, or place, whether public or private, without the permission of the owner or person entitled to the possession or in control of it.

(k) (1) Anyone who looks through a hole or opening, into, or otherwise views, by means of any instrumentality, including, but not limited to, a periscope, telescope, binoculars, camera, or camcorder, the interior of a bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which the occupant has a reasonable expectation of privacy, with the intent to invade the privacy of a person or persons inside. This subdivision shall not apply to those areas of a private business used to count currency or other negotiable instruments.

(2) Anyone who secretes a periscope, telescope, binoculars, camera, or camcorder with the intent to invade the privacy of a person or persons who otherwise have a reasonable expectation of privacy, whether in a public or private place, is guilty of disorderly conduct, a misdemeanor.

In any accusatory pleading charging a violation of subdivision (b), if the defendant has been once previously convicted of a violation of that subdivision, the previous conviction shall be charged in the accusatory pleading. If the previous conviction is found to be true by the jury, upon a jury trial, or by the court, upon a court trial, or is admitted by the defendant, the defendant shall be imprisoned in a county jail for a period of not less than 45 days and shall not be eligible for release upon completion of sentence, on probation, on parole, on work furlough or work release, or on any other basis until he or she has served a period of not less than 45 days in a county jail. In all cases in which probation is granted, the court shall require as a condition thereof that the person be confined in a county jail for at least 45 days. In no event does the court have the power to absolve a person who violates this subdivision from the obligation of spending at least 45 days in confinement in a county jail.

In any accusatory pleading charging a violation of subdivision (b), if the defendant has been previously convicted two or more times of a violation of that subdivision, each such previous conviction shall be charged in the accusatory pleading. If two or more of these previous convictions are found to be true by the jury, upon a jury trial, or by the court, upon a court trial, or are admitted by the defendant, the defendant shall be imprisoned in a county jail for a period of not less than 90 days and shall not be eligible for release upon completion of sentence, on probation, on parole, on work furlough or work release, or on any other basis until he or she has served a period of not less than 90 days in a county jail. In all cases in which probation is granted, the court shall require as a condition thereof that the person be confined in a county jail for at least 90 days. In no event does the court have the power to absolve a person who violates this subdivision from the obligation of spending at least 90 days in confinement in a county jail.

In addition to any punishment prescribed by this section, a court may suspend, for not more than 30 days, the privilege of the person to operate a motor vehicle pursuant to Section 13201.5 of the Vehicle Code for any violation of subdivision (b) that was committed within 1,000 feet of a private residence and with the use of a vehicle. In lieu of the suspension, the court may order a person's privilege to operate a motor vehicle restricted, for not more than six months, to necessary travel to and from the person's place of employment or education. If driving a motor vehicle is necessary to perform the duties of the person's employment, the court may also allow the person to drive in that person's scope of employment.

SEC. 2. Section 13201.5 of the Vehicle Code is amended to read:

13201.5. (a) A court may suspend, for not more than 30 days, the privilege of any person to operate a motor vehicle upon conviction of subdivision (b) of Section 647 of the Penal Code where the violation was committed within 1,000 feet of a private residence and with the use of a vehicle.

(b) A court may suspend, for not more than 30 days, the privilege of any person to operate a motor vehicle upon conviction of subdivision (a) of Section 647 of the Penal Code, where a peace officer witnesses the violator pick up a person who is engaging in loitering with the intent to commit prostitution, as described in Section 653.22 of the Penal Code, and the violator subsequently engages with that person in a lewd act within 1,000 feet of a private residence and with the use of a vehicle.

(c) Instead of ordering the suspension under subdivision (a) or (b), a court may order a person's privilege to operate a motor vehicle restricted for not more than six months to necessary travel to and from the person's place of employment or education. If driving a motor vehicle is necessary to perform the duties of the person's employment, the court may also allow the person to drive in that person's scope of employment.

SEC. 3. Section 22659.5 of the Vehicle Code is amended to read:

22659.5. (a) Notwithstanding any other provision of law, any city, any county, or any city and county, may adopt an ordinance establishing a five-year pilot program that implements procedures for declaring any motor vehicle a public nuisance when the vehicle is used in the commission of an act in violation of Section 266h or 266i of the Penal Code or subdivision (b) of Section 647 of that code, and there is a conviction of Section 266h or 266i of the Penal Code or subdivision (b) of Section 647 of that code, or a provision involving any lesser included offense to which the defendant enters a plea of guilty or nolo contendere as part of a plea agreement subsequent to the defendant having been charged with a violation of Section 266h or 266i of the Penal Code or subdivision (b) of Section 647 of that code.

(b) In addition to the authority provided by subdivision (h) of Section 22651, the ordinance may also include procedures to enjoin and abate the declared nuisance by ordering the defendant not to use the vehicle again for purposes of violating Section 266h or 266i of the Penal Code or subdivision (b) of Section 647 of that code and authorizing the temporary impoundment of the vehicle that the court has declared a nuisance if the defendant violates the order. The impoundment shall not exceed 48 hours.

(c) The only action that may be taken to enjoin and abate the declared nuisance are those actions specified in subdivision (b).

(d) Any procedures implemented pursuant to this section shall ensure that no vehicle is declared a nuisance if the vehicle is stolen, unless it is not possible to reasonably ascertain the identity of any owner of the vehicle.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 647 of the Penal Code proposed by both this bill and SB 121. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 647 of the Penal Code, and (3) this bill is enacted after SB 121, in which case Section 1 of this bill shall not become operative.

CHAPTER 759

An act to add Section 135.5 to the Penal Code, relating to public safety officers.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. Section 135.5 is added to the Penal Code, to read:

135.5. Any person who knowingly alters, tampers with, conceals, or destroys relevant evidence in any disciplinary proceeding against a public safety officer, for the purpose of harming that public safety officer, is guilty of a misdemeanor.

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 760

An act to amend Sections 148.1, 148.5, 148.9, 150, 190, 12027, and 12031 of the Penal Code, relating to peace officers.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. Section 148.1 of the Penal Code is amended to read:

148.1. (a) Any person who reports to any peace officer listed in Section 830.1 or 830.2, or subdivision (a) of Section 830.33, employee of a fire department or fire service, district attorney, newspaper, radio station, television station, deputy district attorney, employees of the Department of Justice, employees of an airline, employees of an airport, employees of a railroad or busline, an employee of a telephone company, occupants of a building or a news reporter in the employ of a newspaper or radio or television station, that a bomb or other explosive has been or will be placed or secreted in any public or private place, knowing that the report is false, is guilty of a crime punishable by imprisonment in the state prison, or imprisonment in the county jail not to exceed one year.

(b) Any person who reports to any other peace officer defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 that a bomb or other explosive has been or will be placed or secreted in any public or private place, knowing that the report is false, is guilty of a crime punishable by imprisonment in the state prison or in the county jail not to exceed one year if (1) the false information is given while the peace officer is engaged in the performance of his or her duties as a peace officer and (2) the person providing the false information knows or should have known that the person receiving the information is a peace officer.

(c) Any person who maliciously informs any other person that a bomb or other explosive has been or will be placed or secreted in any public or private place, knowing that the information is false, is guilty of a crime punishable by imprisonment in the state prison, or imprisonment in the county jail not to exceed one year.

(d) Any person who maliciously gives, mails, sends, or causes to be sent any false or facsimile bomb to another person, or places, causes to be placed, or maliciously possesses any false or facsimile bomb, with the intent to cause another to fear for his or her personal safety or the safety of others, is guilty of a crime punishable by imprisonment in the state prison, or imprisonment in the county jail not to exceed one year.

SEC. 2. Section 148.5 of the Penal Code is amended to read:

148.5. (a) Every person who reports to any peace officer listed in Section 830.1 or 830.2, or subdivision (a) of Section 830.33, district attorney, or deputy district attorney that a felony or misdemeanor has been committed, knowing the report to be false, is guilty of a misdemeanor.

(b) Every person who reports to any other peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, that a felony or misdemeanor has been committed, knowing the report to be false, is guilty of a misdemeanor if (1) the false information is given while the peace officer is engaged in the

performance of his or her duties as a peace officer and (2) the person providing the false information knows or should have known that the person receiving the information is a peace officer.

(c) Except as provided in subdivisions (a) and (b), every person who reports to any employee who is assigned to accept reports from citizens, either directly or by telephone, and who is employed by a state or local agency which is designated in Section 830.1, 830.2, subdivision (e) of Section 830.3, Section 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37, or 830.4, that a felony or misdemeanor has been committed, knowing the report to be false, is guilty of a misdemeanor if (1) the false information is given while the employee is engaged in the performance of his or her duties as an agency employee and (2) the person providing the false information knows or should have known that the person receiving the information is an agency employee engaged in the performance of the duties described in this subdivision.

(d) Every person who makes a report to a grand jury that a felony or misdemeanor has been committed, knowing the report to be false, is guilty of a misdemeanor. This subdivision shall not be construed as prohibiting or precluding a charge of perjury or contempt for any report made under oath in an investigation or proceeding before a grand jury.

(e) This section does not apply to reports made by persons who are required by statute to report known or suspected instances of child abuse, dependent adult abuse, or elder abuse.

SEC. 3. Section 148.9 of the Penal Code is amended to read:

148.9. (a) Any person who falsely represents or identifies himself or herself as another person or as a fictitious person to any peace officer listed in Section 830.1 or 830.2, or subdivision (a) of Section 830.33, upon a lawful detention or arrest of the person, either to evade the process of the court, or to evade the proper identification of the person by the investigating officer is guilty of a misdemeanor.

(b) Any person who falsely represents or identifies himself or herself as another person or as a fictitious person to any other peace officer defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, upon lawful detention or arrest of the person, either to evade the process of the court, or to evade the proper identification of the person by the arresting officer is guilty of a misdemeanor if (1) the false information is given while the peace officer is engaged in the performance of his or her duties as a peace officer and (2) the person providing the false information knows or should have known that the person receiving the information is a peace officer.

SEC. 4. Section 150 of the Penal Code is amended to read:

150. Every able-bodied person above 18 years of age who neglects or refuses to join the posse comitatus or power of the county, by neglecting or refusing to aid and assist in taking or arresting any person against whom there may be issued any process, or by

neglecting to aid and assist in retaking any person who, after being arrested or confined, may have escaped from arrest or imprisonment, or by neglecting or refusing to aid and assist in preventing any breach of the peace, or the commission of any criminal offense, being thereto lawfully required by any uniformed peace officer, or by any peace officer described in Section 830.1, subdivision (a), (b), (c), (d), (e), or (f) of Section 830.2, or subdivision (a) of Section 830.33, who identifies himself or herself with a badge or identification card issued by the officer's employing agency, or by any judge, is punishable by a fine of not less than fifty dollars ($50) nor more than one thousand dollars ($1,000).

SEC. 5. Section 190 of the Penal Code, as amended by Proposition 179 at the June 7, 1994, statewide primary election, is amended to read:

190. (a) Every person guilty of murder in the first degree shall be punished by death, imprisonment in the state prison for life without the possibility of parole, or imprisonment in the state prison for a term of 25 years to life. The penalty to be applied shall be determined as provided in Sections 190.1, 190.2, 190.3, 190.4, and 190.5.

Except as provided in subdivision (b) or (c), every person guilty of murder in the second degree shall be punished by imprisonment in the state prison for a term of 15 years to life.

Except as provided in subdivision (b), Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term of 15, 20, or 25 years in the state prison imposed pursuant to this section, but the person shall not otherwise be released on parole prior to that time.

(b) Every person guilty of murder in the second degree shall be punished by imprisonment in the state prison for a term of 25 years to life if the victim was a peace officer, as defined in subdivision (a) of Section 830.1, subdivision (a), (b), or (c) of Section 830.2, subdivision (a) of Section 830.33, or Section 830.5, who was killed while engaged in the performance of his or her duties, and the defendant knew, or reasonably should have known, that the victim was a peace officer engaged in the performance of his or her duties.

Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not apply to reduce any minimum term of 25 years in the state prison when the person is guilty of murder in the second degree and the victim was a peace officer, as defined in this subdivision, and the person shall not be released prior to serving 25 years' imprisonment.

(c) Every person guilty of murder in the second degree shall be punished by imprisonment in the state prison for a term of 20 years to life if the killing was perpetrated by means of shooting a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict great bodily injury.

Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term of 20 years in the state prison when the person is guilty of murder in the second degree and is subject to this subdivision, but the person shall not otherwise be released on parole prior to that time.

SEC. 6. Section 190 of the Penal Code, as amended by Section 1 of Chapter 413 of the Statutes of 1997, is amended to read:

190. (a) Every person guilty of murder in the first degree shall be punished by death, imprisonment in the state prison for life without the possibility of parole, or imprisonment in the state prison for a term of 25 years to life. The penalty to be applied shall be determined as provided in Sections 190.1, 190.2, 190.3, 190.4, and 190.5.

Except as provided in subdivision (b), (c), or (d), every person guilty of murder in the second degree shall be punished by imprisonment in the state prison for a term of 15 years to life.

(b) Except as provided in subdivision (c), every person guilty of murder in the second degree shall be punished by imprisonment in the state prison for a term of 25 years to life if the victim was a peace officer, as defined in subdivision (a) of Section 830.1, subdivision (a), (b), or (c) of Section 830.2, subdivision (a) of Section 830.33, or Section 830.5, who was killed while engaged in the performance of his or her duties, and the defendant knew, or reasonably should have known, that the victim was a peace officer engaged in the performance of his or her duties.

(c) Every person guilty of murder in the second degree shall be punished by imprisonment in the state prison for a term of life without the possibility of parole if the victim was a peace officer, as defined in subdivision (a) of Section 830.1, subdivision (a), (b), or (c) of Section 830.2, subdivision (a) of Section 830.33, or Section 830.5, who was killed while engaged in the performance of his or her duties, and the defendant knew, or reasonably should have known, that the victim was a peace officer engaged in the performance of his or her duties, and any of the following facts has been charged and found true:

(1) The defendant specifically intended to kill the peace officer.

(2) The defendant specifically intended to inflict great bodily injury, as defined in Section 12022.7, on a peace officer.

(3) The defendant personally used a dangerous or deadly weapon in the commission of the offense, in violation of subdivision (b) of Section 12022.

(4) The defendant personally used a firearm in the commission of the offense, in violation of Section 12022.5.

(d) Every person guilty of murder in the second degree shall be punished by imprisonment in the state prison for a term of 20 years to life if the killing was perpetrated by means of shooting a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict great bodily injury.

(e) Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not apply to reduce any minimum term of a sentence imposed pursuant to this section. A person sentenced pursuant to this section shall not be released on parole prior to serving the minimum term of confinement prescribed by this section.

SEC. 7. Section 12027 of the Penal Code is amended to read:

12027. Section 12025 does not apply to, or affect, any of the following:

(a) (1) (A) Any peace officer, listed in Section 830.1 or 830.2, or subdivision (a) of Section 830.33, 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 these officers to assist in making arrests or preserving the peace while he or she 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 subdivision. As used in this section and Section 12031, the term "honorably retired" includes all peace officers who have qualified for, and have accepted, a service or disability retirement. For purposes of this section and Section 12031, the term "honorably retired" does not include an officer who has agreed to a service retirement in lieu of termination.

(B) Any officer, except an officer listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33, 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 concealed firearm.

(C) No endorsement or renewal endorsement issued pursuant to paragraph (2) shall be effective unless it is in the format set forth in subparagraph (D), 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 concealed firearm pursuant to this section, shall not be required to have an endorsement in the format set forth in subparagraph (D) until the time of the issuance, on or after January 1, 1989, of a renewal endorsement pursuant to paragraph (2).

(D) A certificate issued pursuant to this paragraph for persons who are not listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33, or subdivision (c) of Section 830.5 or for persons retiring after

January 1, 1981, shall be in the following format: it shall be on a 2×3 inch card, bear the photograph of the retiree, the retiree's name, address, date of birth, the date that the retiree retired, name and address of the agency from which the retiree retired, have stamped on it the endorsement "CCW Approved" and the date the endorsement is to be renewed.

(E) For purposes of this section and Section 12031, "CCW" means "carry concealed weapons."

(2) A retired peace officer, except an officer listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33, or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall petition the issuing agency for the renewal of his or her privilege to carry a concealed firearm every five years. An honorably retired peace officer listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33, 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 concealed firearm. The agency from which a peace officer is honorably retired may, upon initial retirement of that peace officer, or at any time subsequent thereto, deny or revoke for good cause the retired officer's privilege to carry a concealed firearm. A peace officer who is listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33, or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall have his or her privilege to carry a concealed 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 concealed 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 concealed 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.

(b) The possession or transportation of unloaded pistols, revolvers, or other firearms capable of being concealed upon the person as merchandise by a person who is engaged in the business of manufacturing, importing, wholesaling, repairing, or dealing in firearms and who is licensed to engage in that business or the authorized representative or authorized agent of that person while engaged in the lawful course of the business.

(c) Members of the Army, Navy, Air Force, Coast Guard, or Marine Corps of the United States, or the National Guard, when on duty, or organizations which are by law authorized to purchase or receive those weapons from the United States or this state.

(d) The carrying of unloaded pistols, revolvers, or other firearms capable of being concealed upon the person by duly authorized military or civil organizations while parading, or the members thereof when going to and from the places of meeting of their respective organizations.

(e) 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.

(f) Members of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using pistols, revolvers, or other firearms capable of being concealed upon the person upon the target ranges, or transporting these firearms unloaded when going to and from the ranges.

(g) Licensed hunters or fishermen carrying pistols, revolvers, or other firearms capable of being concealed upon the person while engaged in hunting or fishing, or transporting those firearms unloaded when going to or returning from the hunting or fishing expedition.

(h) Transportation of unloaded firearms by a person operating a licensed common carrier or an authorized agent or employee thereof when transported in conformance with applicable federal law.

(i) 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 concealed firearm.

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

(j) The carrying of a pistol, revolver, or other firearm capable of being concealed upon the person by a person who is authorized to carry that weapon in a concealed manner pursuant to Article 3 (commencing with Section 12050).

SEC. 8. 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, or subdivision (a) of Section 830.33, 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 or 830.2, subdivision (a) of Section 830.33, 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 or 830.2, subdivision (a) of Section 830.33, 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, subdivision (a) of Section 830.33, 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, subdivision (a) of Section 830.33, 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. 9. It is the intent of the Legislature that this act shall not be construed to confer any authority, entitlement, or privilege in law, except for those changes specifically made by this act pertaining to peace officers as defined in subdivisions (b) and (c) of Section 830.2 of the Penal Code and subdivision (a) of Section 830.33 of the Penal Code.

SEC. 10. 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. 11. (a) Section 6 of this act shall become operative only if Section 190 of the Penal Code, as amended by Section 1 of Chapter 413 of the Statutes of 1997, is rejected by the voters at the statewide general election held in 1998, in which case Section 7 of this act shall not become operative and shall not be submitted to the voters.

(b) Section 7 of this act shall become operative if Section 190 of the Penal Code, as amended by Section 1 of Chapter 413 of the Statutes of 1997, is approved by the voters at the statewide general election held in 1998, in which case Section 6 of this act shall not become operative and shall not be submitted to the voters.

SEC. 12. Sections 6 and 7 of this act affect an initiative statute and shall become effective only when submitted to, and approved by, the voters pursuant to subdivision (c) of Section 10 of Article II of the

California Constitution and in accordance with the provisions of Section 12 of this act.

CHAPTER 761

An act to amend Sections 202 and 742 of the Welfare and Institutions Code, relating to juvenile court law.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. Section 202 of the Welfare and Institutions Code is amended to read:

202. (a) The purpose of this chapter is to provide for the protection and safety of the public and each minor under the jurisdiction of the juvenile court and to preserve and strengthen the minor's family ties whenever possible, removing the minor from the custody of his or her parents only when necessary for his or her welfare or for the safety and protection of the public. When removal of a minor is determined by the juvenile court to be necessary, reunification of the minor with his or her family shall be a primary objective. When the minor is removed from his or her own family, it is the purpose of this chapter to secure for the minor custody, care, and discipline as nearly as possible equivalent to that which should have been given by his or her parents. This chapter shall be liberally construed to carry out these purposes.

(b) Minors under the jurisdiction of the juvenile court who are in need of protective services shall receive care, treatment and guidance consistent with their best interest and the best interest of the public. Minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the interests of public safety and protection, receive care, treatment and guidance which is consistent with their best interest, which holds them accountable for their behavior, and which is appropriate for their circumstances. This guidance may include punishment that is consistent with the rehabilitative objectives of this chapter. If a minor has been removed from the custody of his or her parents, family preservation and family reunification are appropriate goals for the juvenile court to consider when determining the disposition of a minor under the jurisdiction of the juvenile court as a consequence of delinquent conduct when those goals are consistent with his or her best interests and the best interests of the public. When the minor is no longer a ward of the juvenile court, the guidance he or she received should enable him or her to be a law-abiding and productive member of his or her family and the community.

(c) It is also the purpose of this chapter to reaffirm that the duty of a parent to support and maintain a minor child continues, subject to the financial ability of the parent to pay, during any period in which the minor may be declared a ward of the court and removed from the custody of the parent.

(d) Juvenile courts and other public agencies charged with enforcing, interpreting, and administering the juvenile court law shall consider the safety and protection of the public, the importance of redressing injuries to victims, and the best interests of the minor in all deliberations pursuant to this chapter. Participants in the juvenile justice system shall hold themselves accountable for its results. They shall act in conformity with a comprehensive set of objectives established to improve system performance in a vigorous and ongoing manner.

(e) As used in this chapter, "punishment" means the imposition of sanctions which include the following:

(1) Payment of a fine by the minor.

(2) Rendering of compulsory service without compensation performed for the benefit of the community by the minor.

(3) Limitations on the minor's liberty imposed as a condition of probation or parole.

(4) Commitment of the minor to a local detention or treatment facility, such as a juvenile hall, camp, or ranch.

(5) Commitment of the minor to the Department of the Youth Authority.

"Punishment," for the purposes of this chapter, does not include retribution.

(f) In addition to the actions authorized by subdivision (e), the juvenile court may, as appropriate, direct the offender to complete a victim impact class, participate in victim offender conferencing subject to the victim's consent, pay restitution to the victim or victims, and make a contribution to the victim restitution fund after all victim restitution orders and fines have been satisfied, in order to hold the offender accountable or restore the victim or community.

SEC. 2. Section 742 of the Welfare and Institutions Code is amended to read:

742. (a) Upon the request of an alleged victim of a crime, the probation officer shall, within 60 days of the final disposition of a case within which a petition has been filed pursuant to Section 602, inform that person by letter of the final disposition of the case. "Final disposition" means dismissal, acquittal, or findings made pursuant to this article. If the court orders that restitution shall be made to the victim of a crime, the amount, terms, and conditions thereof shall be included in the information provided pursuant to this section.

(b) In any case in which a petition has been filed pursuant to Section 602, the probation officer shall inform the victim of the offense, if any, of any victim-offender conferencing program or victim impact class available in the county, and of his or her right

pursuant to subdivision (a) to be informed of the final disposition of the case, including his or her right, if any, to victim restitution, as permitted by law.

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 762

An act to amend Sections 6051, 13600, 13601, and 13602 of, and to add Chapter 6.5 (commencing with Section 6065) to Title 7 of Part 3 of, the Penal Code, relating to corrections.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. Section 6051 of the Penal Code is amended to read:

6051. The Inspector General shall conduct a management review audit of any warden in the Department of Corrections or superintendent in the Department of the Youth Authority who has held his or her position for more than four years. The management review audit shall include, but not be limited to, issues relating to personnel, training, investigations, and financial matters. The audit report shall be submitted to the secretary of the agency, and the respective director for evaluation and for any response deemed necessary. Any Member of the Legislature may request and shall be provided with a copy of any audit report. A report that involves potential criminal investigations or prosecution shall be considered confidential.

SEC. 2. Chapter 6.5 (commencing with Section 6065) is added to Title 7 of Part 3 of the Penal Code, to read:

CHAPTER 6.5. INTERNAL INVESTIGATIONS

6065. (a) The Legislature finds and declares that investigations of the Department of Corrections and the Department of the Youth

Authority that are conducted by their respective offices of internal affairs, or any successor to these offices, require appropriately trained personnel, who perform their duties with honesty, credibility, and without any conflicts of interest.

(b) To meet the objectives stated in subdivision (a), the following conditions shall be met:

(1) Prior to training any peace officer who is selected to conduct internal affairs investigations, the department shall conduct a complete and thorough background check. This background check shall be in addition to the original background screening that was conducted when the person was hired as a peace officer. Each person shall satisfactorily pass the second background check. No person who has been the subject of a sustained, serious disciplinary action, including, but not limited to, termination, suspension, or demotion shall pass the background check.

(2) All internal affairs allegations or complaints, whether investigated or not, shall be logged and numbered numerically on an annual basis. The log shall specify, but not be limited to, the following information: the numerical number of the allegation or complaint; the date of receipt of the allegation or complaint; the location or facility to which the allegation or complaint pertains; and the disposition of all actions taken, including any final action taken. The log shall be made available to the Inspector General.

(c) Consistent with the objectives expressed in subdivision (a), investigators shall conduct investigations and inquiries in a manner that provides a complete and thorough presentation of the facts regarding the allegation or complaint. All extenuating and mitigating facts shall be explored and reported. The role of the investigator is that of a fact finder. All reports prepared by an investigator shall provide the appointing authority with a complete recitation of the facts, and shall refrain from conjecture or opinion.

(1) Uncorroborated or anonymous allegations shall not constitute the sole basis for disciplinary action by the department, other than an investigation.

(2) All reports shall be submitted in a standard format, begin with a statement of the allegation or complaint, provide all relevant facts, and include the investigator's signature, certifying that the investigator has complied with the provisions of this section subject to compliance with Sections 118.1 and 148.6 of the Penal Code.

SEC. 3. Section 13600 of the Penal Code is amended to read:

13600. (a) The Legislature finds and declares that peace officers of the state correctional system, including youth and adult correctional facilities, fulfill responsibilities that require creation and application of sound selection criteria for applicants and standards for their training prior to assuming their duties. For the purposes of this section, correctional peace officers are peace officers as defined in Section 830.5 and employed or designated by the Department of Corrections and the Department of the Youth Authority.

The Legislature further finds that sound applicant selection and training are essential to public safety and in carrying out the missions of the Youth and Adult Correctional Agency in the custody and care of the state's offender population. The greater degree of professionalism which will result from sound screening criteria and a significant training curriculum will greatly aid the Youth and Adult Correctional Agency in maintaining smooth, efficient, and safe operations and effective programs in the Department of Corrections and the Department of the Youth Authority.

(b) There is within the Youth and Adult Correctional Agency a Commission on Correctional Peace Officer Standards and Training, hereafter referred to as the CPOST. The Department of Corrections-Department of the Youth Authority Joint Apprenticeship Committee, as referred to in the Memorandum of Understanding for Unit 6, is hereby renamed the Commission on Correctional Peace Officer Standards and Training. Any reference to the Department of Corrections-Department of the Youth Authority Joint Apprenticeship Committee shall be deemed to refer to the CPOST.

(c) (1) The executive board of the CPOST shall be composed of six voting members.

(A) Two members from, appointed by, and representing the management of, the Department of Corrections and one member from, appointed by, and representing the Department of the Youth Authority.

(B) Three members from, and appointed by the Governor upon recommendation by, and representing the membership of, the California Correctional Peace Officers' Association. Two members shall be rank and file persons from State Bargaining Unit 6 and one member shall be supervisory.

(C) Appointments shall be for four years.

(D) Promotion of a member of CPOST shall invalidate the appointment of that member and shall require the recommendation and appointment of a new member if the member was appointed from rank and file or from supervisory personnel and promoted out of his or her respective rank and file or supervisory position during his or her term on CPOST.

(2) Each appointing authority shall appoint one alternate member for each regular member who they appoint pursuant to paragraph (1). Every alternate member shall possess the same qualifications as the regular member and shall substitute for, and vote in place of, the regular member whenever he or she is absent.

(d) The rules for voting on the executive board of the CPOST shall be as follows:

(1) Decisions shall be made by a majority vote.

(2) Proxy voting shall not be permitted.

(3) Tentative approval of a decision may be taken by a telephone vote. The CPOST members' decision shall be documented in writing

and submitted to the CPOST for confirmation at the next scheduled CPOST meeting so as to become a part of the permanent record.

(e) The executive board of the CPOST shall adopt rules as it deems necessary for efficient operations, including, but not limited to, the appointment of advisory members for forming whatever committee it deems necessary to conduct its business. These rules shall be in conformance with the State Personnel Board rules and regulations, the Department of Personnel Administration rules and regulations, and the provisions of the State Bargaining Unit 6 Memorandum of Understanding.

(f) The CPOST shall appoint an executive director. The executive director shall appoint staff as provided for in the annual Budget Act, beginning in fiscal year 1999–2000.

SEC. 4. Section 13601 of the Penal Code is amended to read:

13601. (a) The CPOST shall develop, approve, and monitor standards for the selection and training of state correctional peace officer apprentices. Any standard for selection established under this subdivision shall be subject to approval by the State Personnel Board. Using the psychological and screening standards established by the State Personnel Board, the State Personnel Board shall ensure that, prior to training, each applicant who has otherwise qualified in all physical and other testing requirements to be a peace officer in either a youth or adult correctional facility, is determined to be free from emotional or mental conditions that might adversely affect the exercise of his or her duties and powers as a peace officer.

(b) The CPOST may approve standards for a course in the carrying and use of firearms for correctional peace officers that is different from that prescribed pursuant to Section 832. The standards shall take into consideration the different circumstances presented within the institutional setting from that presented to other law enforcement agencies outside the correctional setting.

(c) Notwithstanding Section 3078 of the Labor Code, the length of the probationary period for correctional peace officer apprentices shall be determined by the CPOST subject to approval by the State Personnel Board, pursuant to Section 19170 of the Government Code.

(d) The CPOST shall develop, approve, and monitor standards for advanced rank-and-file and supervisory state correctional peace officer and training programs. When a correctional peace officer is promoted, he or she shall be provided with and be required to complete these secondary training experiences.

(e) The CPOST shall develop, approve, and monitor standards for the training of state correctional peace officers in the handling of stress associated with their duties.

(f) Toward the accomplishment of the objectives of this act, the CPOST may confer with, and may avail itself of the assistance and recommendations of, other state and local agencies, boards, or commissions.

(g) Notwithstanding the authority of the CPOST, the departments shall design and deliver training programs, shall conduct validation studies, and shall provide program support. The CPOST shall monitor program compliance by the departments.

(h) The CPOST may disapprove any training courses created by the departments pursuant to the standards developed by the commission if it determines that the courses do not meet the prescribed standards.

(i) The CPOST shall annually submit an estimate of costs to conduct those inquiries and audits as may be necessary to determine whether the departments and each of their institutions and parole regions are adhering to the standards developed by CPOST, and shall conduct such inquiries and audits consistent with the annual Budget Act.

(j) The CPOST shall establish and implement procedures for reviewing and issuing decisions concerning complaints or recommendations from interested parties regarding CPOST rules, regulations, standards, or decisions.

SEC. 5. Section 13602 of the Penal Code is amended to read:

13602. (a) The Department of Corrections shall use the training academy at Galt. This academy shall be known as the Richard A. McGee Academy. The Department of the Youth Authority shall use the training center at Stockton. The training divisions, in using the funds, shall endeavor to minimize costs of administration so that a maximum amount of the funds will be used for providing training and support to correctional peace officers while being trained by the departments.

(b) Each new cadet who attends an academy after July 1, 2000, shall complete the course of training, pursuant to standards approved by CPOST before he or she may be assigned to a post or job as a peace officer. After July 1, 2000, every newly appointed first-line or second-line supervisor shall complete the course of training, pursuant to standards approved by CPOST for that position. Every effort shall be made to provide training prior to commencement of supervisorial duties. If such training is not completed within six months of appointment to that position, any first-line or second-line supervisor shall not perform supervisory duties until the training is completed. CPOST shall report to the Governor and to the appropriate policy and fiscal committees of the Legislature by September 1, 1999, concerning the training standards determined for line correctional peace officers and supervisors of the California Department of Corrections and the California Youth Authority. This report shall include, but not be limited to, a description of the standards for the curriculum of the respective academies and the length of time required to satisfactorily train officers for their duties.

It is the intent of this section that the report be included in the basis for a new budget change proposal for the administration to consider

in the 2000–01 Budget Act to enhance department training operations.

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

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

CHAPTER 763

An act to add Section 637.9 to the Penal Code, relating to personal information.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. Section 637.9 is added to the Penal Code, to read:

637.9. (a) Any person who, in the course of business, provides mailing lists, computerized or telephone-based reference services, or similar products or services utilizing lists, as defined, knowingly does any of the following is guilty of a misdemeanor:

(1) Fails, prior to selling or distributing a list to a first-time buyer, to obtain the buyer's name, address, telephone number, tax identification number if the buyer is a forprofit entity, a sample of the type of material to be distributed using the list, or to make a good-faith effort to verify the nature and legitimacy of the business or organization to which the list is being sold or distributed.

(2) Knowingly provides access to personal information about children to any person who he or she knows is registered or required to register as a sex offender.

(b) Any person who uses personal information about a child that was obtained for commercial purposes to directly contact the child or the child's parent to offer a commercial product or service to the child and who knowingly fails to comply with the parent's request to take steps to limit access to personal information about a child only to authorized persons is guilty of a misdemeanor.

(c) Any person who knowingly distributes or receives any personal information about a child with knowledge that the

information will be used to abuse or physically harm the child is guilty of a misdemeanor.

(d) (1) List brokers shall, upon a written request from a parent that specifically identifies the child, provide the parent with procedures that the parent must follow in order to withdraw consent to use personal information relating to his or her child. Any list broker who fails to discontinue disclosing personal information about a child within 20 days after being so requested in writing by the child's parent, is guilty of a misdemeanor.

(2) Any person who, through the mail, markets or sells products or services directed to children, shall maintain a list of all individuals, and their addresses, who have requested in writing that the person discontinue sending any marketing or sales materials to the individual or the individual's child or children. No person who is obligated to maintain that list shall cause any marketing or sales materials, other than those that are already in the process of dissemination, to be sent to any individual's child or children, after that individual has made that written request. Any person who is subject to the provisions of this paragraph, who fails to comply with the requirements of this paragraph or who violates the provisions of this paragraph is guilty of a misdemeanor.

(e) The following shall be exempt from subdivisions (a) and (b):

(1) Any federal, state, or local government agency or law enforcement agency.

(2) The National Center for Missing and Exploited Children.

(3) Any educational institution, consortia, organization, or professional association, which shall include, but not be limited to, the California community colleges; the California State University, and each campus, branch, and function thereof; each campus, branch, and function of the University of California; the California Maritime Academy; or any independent institution of higher education accredited by an agency recognized by the federal Department of Education. For the purposes of this paragraph, "independent institution of higher education" means any nonpublic higher education institution that grants undergraduate degrees, graduate degrees, or both undergraduate and graduate degrees, is formed as a nonprofit corporation in this state, and is accredited by an agency recognized by the federal Department of Education; or any private postsecondary vocational institution registered, approved, or exempted by the Bureau of Private Postsecondary Vocational Education.

(4) Any nonprofit organization that is exempt from taxation under Section 23701d of the Revenue and Taxation Code.

(f) As used in this section:

(1) "Child" means a person who is under 16 years of age.

(2) "Parent" shall include a legal guardian.

(3) "Personal information" means any information that identifies a child and that would suffice to locate and contact the child,

including, but not limited to, the name, postal or electronic mail address, telephone number, social security number, date of birth, physical description of the child, or family income.

(4) "List" may include, but is not limited to, a collection of name and address records of individuals sharing a common interest, purchase history, demographic profile, membership, or affiliation.

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 764

An act to add Section 77212.5 to the Government Code, relating to courts.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. Section 77212.5 is added to the Government Code, to read:

77212.5. Commencing on July 1, 1999, and thereafter, the trial courts of each county in which court security services are otherwise required by law to be provided by the sheriff's department shall enter into an agreement with the sheriff's department that was providing court security services as of July 1, 1998, regarding the provision of court security services.

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 765

An act to amend Section 70 of the Military and Veterans Code, relating to veterans, and making an appropriation therefor.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. Section 70 of the Military and Veterans Code is amended to read:

70. (a) The Department of Veterans Affairs succeeds to, and is vested with, the duties, powers, purposes, responsibilities, and jurisdiction of the Department of Military and Veterans' Affairs, the Division of Veterans' Welfare, the Veterans' Welfare Board, the California Veterans' Commission, the Division of Veterans' Homes, the Board of Directors of the Veterans' Home of California, and the Board of Directors of the Woman's Relief Corps Home of California and of the officers and employees of that department, those divisions and boards, and that commission, except that the Secretary of Veterans Affairs, in lieu of the Director of Military and Veterans' Affairs, is a member of the Governor's cabinet and, in lieu of the chair of the Veterans' Welfare Board, is a member of each and every veterans' finance committee of which the chair until now has been a member.

(b) (1) There is hereby created the California Veterans Memorial Registry Fund, for the deposit of financial contributions made for the support of the Veterans Registry, which is part of the California Veterans Memorial. Notwithstanding Section 13340 of the Government Code and without regard to fiscal years, the money in the fund is hereby continuously appropriated to the department for the purpose of defraying the costs of data entry and system management for the Veterans Registry and the reasonable costs that are incurred by the department for administering the fund.

(2) In order to be eligible for inclusion in the Veterans Registry, a person must have served in the active military of the United States, received a discharge under honorable conditions, and resided in California at some time before, during, or after his or her military service. Failure to meet this eligibility requirement constitutes good cause for removal of the person's name from the Veterans Registry.

CHAPTER 766

An act to amend Section 1094 of, and to add and repeal Section 1095.2 of, the Unemployment Insurance Code, relating to employment.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. Section 1094 of the Unemployment Insurance Code is amended to read:

1094. (a) Except as otherwise specifically provided in this code, the information obtained in the administration of this code shall be for the exclusive use and information of the director in discharge of his or her duties and shall not be open to the public, nor admissible in evidence in any action or special proceeding, other than one arising out of the provisions of this code, one arising out of the provisions of Division 9 (commencing with Section 10000) of the Welfare and Institutions Code to determine entitlement to, and directly connected with and limited to the administration of, public social services, or a proceeding to determine entitlement to, and directly connected with and limited to the administration of, locally provided general relief or assistance benefits or medical assistance services. This information may be tabulated and published in statistical form for the use and information of state departments and the public, except that the name of the employing unit or of any worker shall never be divulged in the course of the tabulation or publication.

(b) Any employee or his or her representative may receive his or her wage information upon written request by the employee. The information shall be provided without charge.

SEC. 2. Section 1094 of the Unemployment Insurance Code is amended to read:

1094. (a) Except as otherwise specifically provided in this code, the information obtained in the administration of this code is confidential, not open to the public, and shall be for the exclusive use and information of the director in discharge of his or her duties.

(b) The information released to authorized entities pursuant to other provisions of the code shall not be admissible in evidence in any action or special proceeding, other than one arising out of the provisions of this code or one described in Section 1095.

(c) The information may be tabulated and published in statistical form for use by federal, state, and local governmental departments and agencies, and the public, except that the name of the employing unit or of any worker shall never be divulged in the course of the tabulation or publication.

(d) Wages as defined by Section 13009 and amounts required to be deducted and withheld under Section 13020 shall not be disclosed except as provided in Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(e) Any employee or his or her representative may receive his or her wage information upon written request by the employee. The information shall be provided without charge.

(f) Any person who knowingly accesses, uses, or discloses any confidential information without authorization is in violation of this section and is guilty of a misdemeanor.

SEC. 3. Section 1095.2 is added to the Unemployment Insurance Code, to read:

1095.2. (a) Prior to implementing subdivisions (b) to (g), inclusive, the department shall evaluate the best practices and system weaknesses of similar programs in other states. This evaluation shall be completed no later than July 1, 1999.

(b) The director may disclose wage information to private entities for the purpose of verifying information provided by an individual in connection with a specific credit transaction. The manner and format in which this information shall be provided shall be designated by the director. To protect the integrity of the department's wage information, the private entity shall not have direct on-line access to any of the department's automated data bases. The wage information may be electronically requested by, or furnished to, the private entity. The wage information shall be furnished only if all of the following conditions are met:

(1) The individual to whom the information pertains provides written consent to the disclosure in accordance with 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) before the information is released to the private entity.

(2) At a minimum the consent contains language disclosing the following information:

(A) The consent to disclose is voluntary and not required by law.

(B) Refusal to consent to disclosure of state wage information shall not be the basis for the denial of credit.

(C) If consent is granted, the individual's wage information shall be released.

(D) The release shall be only for the specific transaction identified in the individual's consent.

(E) The number of days the consent shall be valid following the execution of the consent by the individual.

(F) The wage information reported to the state by the individual's employers will be accessed.

(G) A statement indicating all of the parties who may receive the information released.

(3) The release of the information is for a purpose authorized by, and occurs in a manner permitted by, the United States Department of Labor.

(4) The release of information must occur within the period set forth within the written consent. The director shall designate the maximum number of days for which the written consent shall be valid following the execution of the consent by the individual.

(c) The private entity shall comply with all applicable duties and obligations of a credit reporting agency arising under state or federal law.

(d) The director shall establish minimum audit standards, security standards, technological requirements, and any other terms or conditions deemed necessary in the discretion of the director to safeguard the confidentiality of the information released pursuant to this section and to otherwise serve the public interest.

(e) The private entity shall, prior to the provision of any wage information, pay all development and other startup costs incurred by the state in connection with implementing systems and procedures for disclosure of the wage information.

The private entity shall also pay a transaction fee in an amount established by the director for providing this wage information. Proceeds from the transaction fee shall be used to offset expenditures for ongoing support of the disclosure of wage information to the private entity, and the remainder shall be deposited into a separate account and shall only be used for the proper and efficient administration of the unemployment compensation program as allowed by the United States Department of Labor.

(f) The private entity shall post a bond in an amount specified by the director to indemnify the state from any and all liability arising from the illegal, unauthorized, or otherwise inappropriate use of the wage information released pursuant to this section.

(g) For purposes of this section, "wage information" means the amount of wages reported by employers as earned by the individual during the base period as defined in Section 1275, or any additional periods as agreed to by the director, and the name or names and address or addresses of record of the employers who paid those wages.

(h) Information obtained from the department by a private entity pursuant to this section shall be used only to (1) verify the accuracy of wage information previously provided to the creditor by an individual in connection with a specific credit transaction, (2) meet the private entity's or creditor's obligation under applicable fair credit laws, and (3) satisfy standard underwriting requirements imposed by the creditor or secondary market entities relating to that specific credit transaction. Any other use of wage information shall constitute a violation of this section.

(i) The private entity shall furnish to the individual to whom the wage information pertains (1) a copy of wage information that was

furnished to any other entity, (2) an identification of all other entities to which the information was furnished, and (3) an explanation of the purpose for which the information was furnished.

(j) Any person or entity who violates any provision of this section shall be subject to a civil penalty of up to five thousand dollars ($5,000). In addition, any person who is injured by a violation of this section may bring a civil action to recover damages, attorney fees, and costs of suit.

(k) This section shall remain in effect only until July 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2002, deletes or extends that date.

SEC. 4. Section 2 of this bill incorporates amendments to Section 1094 of the Unemployment Insurance Code proposed by both this bill and AB 2017. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 1094 of the Unemployment Insurance Code, and (3) this bill is enacted after AB 2017, in which case Section 1 of this bill shall not become operative.

CHAPTER 767

An act to amend Sections 1216 and 4016.5 of the Penal Code, relating to corrections.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. Section 1216 of the Penal Code is amended to read:

1216. If the judgment is for imprisonment in the state prison, the sheriff of the county shall, upon receipt of a certified abstract or minute order thereof, take and deliver the defendant to the warden of the state prison. The sheriff also shall deliver to the warden the certified abstract of the judgment or minute order, a Criminal Investigation and Identification (CII) number, a Confidential Medical/Mental Health Information Transfer Form indicating that the defendant is medically capable of being transported, and take from the warden a receipt for the defendant.

SEC. 2. Section 4016.5 of the Penal Code is amended to read:

4016.5. A city or county shall be reimbursed by the Department of Corrections for costs incurred resulting from the detention of a state prisoner, a person sentenced or referred to the state prison, or a parolee and from parole revocation proceedings when the detention meets any of the following conditions:

(a) The detention relates to a violation of the conditions of parole or the rules and regulations of the Director of Corrections and does not relate to a new criminal charge.

(b) The detention is pursuant to (1) an order of the Board of Prison Terms under the authority granted by Section 3060, or (2) an order of the Governor under the authority granted by Section 3062 or (3) an exercise of a state parole or correctional officer's peace officer powers as specified in Section 830.5.

(c) Security services and facilities are provided for hearings which are conducted by the Board of Prison Terms to revoke parole.

(d) The detention results from a new commitment, or a referral pursuant to Section 1203.03, once the abstract of judgment has been completed, the department's intake control unit has been notified by the county that the prisoner is ready to be transported pursuant to Section 1216, and the department is unable to accept delivery of the prisoner. The reimbursement shall be provided for each day starting on the day following the fifth working day after the date of notification by the county, if the prisoner remains ready to be delivered and the department is unable to receive the prisoner. If a county delivers or attempts to deliver a person to the department without the prior notification required by this paragraph, the date of the delivery or attempted delivery shall be recognized as the notification date pursuant to this paragraph. The notification and verification required by the county for prisoners ready to be transported, and reimbursement provided to the county for prisoners that the department is unable to receive, shall be made pursuant to procedures established by the department.

A city or county shall be reimbursed by the department from funds appropriated in Item 5240-101-0001 of the Budget Act of 1998 for costs incurred pursuant to subdivisions (a), (b), and (c) and from funds appropriated in Item 5240-001-0001 of that act for costs incurred pursuant to subdivision (d).

The reimbursement required by this section shall be expended for maintenance, upkeep, and improvement of jail conditions, facilities, and services. Before the county is reimbursed by the department, the total amount of all charges against that county authorized by law for services rendered by the department shall be first deducted from the gross amount of reimbursement authorized by this section. The net reimbursement shall be calculated and paid monthly by the department. The department shall withhold all or part of the net reimbursement to a county whose jail facility or facilities do not conform to minimum standards for local detention facilities as authorized by Section 6030 only if the county is failing to make reasonable efforts to correct differences, with consideration given to the resources available for those purposes.

"Costs incurred resulting from the detention," as used in this section, shall include the same cost factors as are utilized by the

Department of Corrections in determining the cost of prisoner care in state correctional facilities.

CHAPTER 768

An act to amend Section 1244 of the Business and Professions Code, and to amend Section 101160 of the Health and Safety Code, relating to clinical laboratory technology.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. Section 1244 of the Business and Professions Code is amended to read:

1244. (a) Nothing in this chapter shall restrict, limit, or prevent a program of nondiagnostic general health assessment provided that:

(1) The program meets the requirements of Section 1265 and complies with the requirements of CLIA.

(2) The purpose of the program is to refer individuals to licensed sources of care as indicated.

(3) The program utilizes only those devices that comply with all of the following:

(A) Meet all applicable state and federal performance standards pursuant to Section 111245 of the Health and Safety Code.

(B) Are not adulterated as specified in Article 2 (commencing with Section 111250) of Chapter 6 of Part 5 of Division 104 of the Health and Safety Code.

(C) Are not misbranded as specified in Article 3 (commencing with Section 111330) of Chapter 6 of Part 5 of Division 104 of the Health and Safety Code.

(D) Are not new devices unless they meet the requirements of Section 111550 of the Health and Safety Code.

(4) The program maintains a supervisory committee consisting of, at a minimum, a licensed physician and surgeon and a laboratory technologist licensed pursuant to this chapter.

(5) The supervisory committee for the program adopts written protocols that shall be followed in the program and that shall contain all of the following:

(A) Provision of written information to individuals to be assessed that shall include, but not be limited to, the following:

(i) The potential risks and benefits of assessment procedures to be performed in the program.

(ii) The limitations, including the nondiagnostic nature, of assessment examinations of biological specimens performed in the program.

(iii) Information regarding the risk factors or markers targeted by the program.

(iv) The need for followup with licensed sources of care for confirmation, diagnosis, and treatment as appropriate.

(B) Proper use of each device utilized in the program including the operation of analyzers, maintenance of equipment and supplies, and performance of quality control procedures including the determination of both accuracy and reproducibility of measurements in accordance with instructions provided by the manufacturer of the assessment device used.

(C) Proper procedures to be employed when drawing blood, if blood specimens are to be obtained.

(D) Proper procedures to be employed in handling and disposing of all biological specimens to be obtained and material contaminated by those biological specimens.

(E) Proper procedures to be employed in response to fainting, excessive bleeding, or other medical emergencies.

(F) Reporting of assessment results to the individual being assessed.

(G) Referral and followup to licensed sources of care as indicated.

The written protocols adopted by the supervisory committee shall be maintained for at least one year following completion of the assessment program during which period they shall be subject to review by department personnel and the local health officer or his or her designee, including the public health laboratory director.

(b) If skin puncture to obtain a blood specimen is to be performed in a program of nondiagnostic general health assessment, the individual performing the skin puncture shall be either:

(1) Authorized to perform skin puncture under this chapter.

(2) Any person who possesses a statement signed by a licensed physician and surgeon that attests that the named person has received adequate training in the proper procedure to be employed in skin puncture.

(c) A program of nondiagnostic general health assessment that fails to meet the requirements set forth in subdivisions (a) and (b) shall not operate.

(d) For purposes of this section, "skin puncture" means the collection of a blood specimen by the finger prick method only and does not include venipuncture, arterial puncture, or any other procedure for obtaining a blood specimen.

(e) Nothing in this chapter shall be interpreted as prohibiting a licensed clinical laboratory from operating a program of nondiagnostic general health assessment provided that the clinical laboratory complies with the requirements of this section.

SEC. 2. Section 101160 of the Health and Safety Code is amended to read:

101160. (a) Any city or county public health laboratory established for the purposes set forth in this chapter and its personnel

shall be approved by the State Department of Health Services and shall comply with the requirements of CLIA.

(b) For purposes of this section, "CLIA" means the federal Clinical Laboratory Improvement Amendments of 1988 (42 U.S.C. Sec. 263a; P.L. 100-578) and the regulations adopted thereunder by the federal Health Care Financing Administration and effective on January 1, 1994, or any later date, when adopted in California pursuant to subdivision (b) of Section 1208 of the Business and Professions 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.

CHAPTER 769

An act to amend Sections 25210 and 25213 of the Corporations Code, relating to broker-dealer agents.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. This act shall be known and may be cited as the Investor Protection Act.

SEC. 2. Section 25210 of the Corporations Code is amended to read:

25210. (a) Unless exempted under the provisions of Chapter 1 (commencing with Section 25200) of this part, no broker-dealer shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any security in this state unless the broker-dealer has first applied for and secured from the commissioner a certificate, then in effect, authorizing that person to act in that capacity.

(b) No person shall, on behalf of a broker-dealer licensed pursuant to Section 25211, or on behalf of an issuer, effect any transaction in, or induce or attempt to induce the purchase or sale of, any security in this state unless that broker-dealer and agent have complied with

any rules as the commissioner may adopt for the qualification and employment of those agents.

(c) The commissioner shall, consistent with Section 25213, review the disciplinary histories of agents upon the filing of notice of (1) the employment or transfer of an agent for a broker-dealer, (2) an amendment to the information filed by the agent at the time of employment or transfer, and (3) the termination of employment of the agent from the broker-dealer.

SEC. 3. Section 25213 of the Corporations Code is amended to read:

25213. The commissioner may, after appropriate notice and opportunity for hearing, by order censure, or suspend for a period not exceeding 12 months, or deny or bar from any position of employment, management or control of any broker-dealer or investment adviser, any officer, director, partner, agent, employee of, or person performing similar functions for, a broker-dealer, if the commissioner finds that the censure, suspension, denial, or bar is in the public interest and that the person has committed any act or omission enumerated in subdivision (a), (e), (f), or (g) of Section 25212 or has been convicted of, or pled nolo contendere to, any offense or been held liable in any civil action specified in subdivision (b) of Section 25212, or is enjoined from any act, conduct or practice specified in subdivision (c) of Section 25212 or is subject to any order specified in subdivision (d) of Section 25212.

CHAPTER 770

An act to amend Section 4707 of the Labor Code, relating to public employees.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. Section 4707 of the Labor Code is amended to read:

4707. (a) Except as provided in subdivision (b), no benefits, except reasonable expenses of burial not exceeding one thousand dollars ($1,000), shall be awarded under this division on account of the death of an employee who is an active member of the Public Employees' Retirement System unless it is determined that a special death benefit, as defined in the Public Employees' Retirement Law, or the benefit provided in lieu of the special death benefit in Section 21365.6 of the Government Code, will not be paid by the Public Employees' Retirement System to the surviving spouse or children under 18 years of age, of the deceased, on account of the death, but if the total death allowance paid to the surviving spouse and children

is less than the benefit otherwise payable under this division the surviving spouse and children are entitled, under this division, to the difference.

The amendments to this section during the 1977–78 Regular Session shall be applied retroactively to July 1, 1976.

(b) The limitation prescribed by subdivision (a) shall not apply to local safety members, or patrol members, as defined in Section 20390 of the Government Code, of the Public Employees' Retirement System.

CHAPTER 771

An act to amend Section 7480 of the Government Code, relating to financial privacy.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. Section 7480 of the Government Code is amended to read:

7480. Nothing in this chapter prohibits any of the following:

(a) The dissemination of any financial information that is not identified with, or identifiable as being derived from, the financial records of a particular customer.

(b) When any police or sheriff's department or district attorney in this state certifies to a bank, credit union, or savings association in writing that a crime report has been filed that involves the alleged fraudulent use of drafts, checks, or other orders drawn upon any bank, credit union, or savings association in this state, the police or sheriff's department or district attorney may request a bank, credit union, or savings association to furnish, and a bank, credit union, or savings association shall furnish, a statement setting forth the following information with respect to a customer account specified by the police or sheriff's department or district attorney for a period 30 days prior to and up to 30 days following the date of occurrence of the alleged illegal act involving the account:

(1) The number of items dishonored.

(2) The number of items paid which created overdrafts.

(3) The dollar volume of the dishonored items and items paid which created overdrafts and a statement explaining any credit arrangement between the bank, credit union, or savings association and customer to pay overdrafts.

(4) The dates and amounts of deposits and debits and the account balance on these dates.

(5) A copy of the signature card, including the signature and any addresses appearing on a customer's signature card.

(6) The date the account opened and, if applicable, the date the account closed.

(7) A bank, credit union, or savings association that provides the requesting party with copies of one or more complete account statements prepared in the regular course of business shall be deemed to be in compliance with paragraphs (1), (2), (3), and (4).

(c) (1) The Attorney General, a supervisory agency, the Franchise Tax Board, the State Board of Equalization, the Employment Development Department, the Controller or an inheritance tax referee when administering the Prohibition of Gift and Death Taxes (Part 8 (commencing with Section 13301) of Division 2 of the Revenue and Taxation Code), a police or sheriff's department or district attorney, a county welfare department when investigating welfare fraud, a county auditor-controller or director of finance when investigating fraud against the county, or the Department of Corporations when conducting investigations in connection with the enforcement of laws administered by the Commissioner of Corporations, from requesting of an office or branch of a financial institution, and the office or branch from responding to a request, as to whether a person has an account or accounts at that office or branch and, if so, any identifying numbers of the account or accounts.

(2) No additional information beyond that specified in this section shall be released to a county welfare department without either the accountholder's written consent or a judicial writ, search warrant, subpoena, or other judicial order.

(3) A county auditor-controller or director of finance who unlawfully discloses information he or she is authorized to request under this subdivision is guilty of the unlawful disclosure of confidential data, a misdemeanor, which shall be punishable as set forth in Section 7485.

(d) The examination by, or disclosure to, any supervisory agency of financial records that relate solely to the exercise of its supervisory function. The scope of an agency's supervisory function shall be determined by reference to statutes which grant authority to examine, audit, or require reports of financial records or financial institutions as follows:

(1) With respect to the Commissioner of Financial Institutions by reference to Division 1 (commencing with Section 99), Division 1.5 (commencing with Section 4800), Division 2 (commencing with Section 5000), Division 5 (commencing with Section 14000), Division 7 (commencing with Section 18000), Division 15 (commencing with Section 31000), and Division 16 (commencing with Section 33000) of the Financial Code.

(2) With respect to the Controller by reference to Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

(3) With respect to the Administrator of Local Agency Security by reference to Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

(e) The disclosure to the Franchise Tax Board of (1) the amount of any security interest that a financial institution has in a specified asset of a customer or (2) financial records in connection with the filing or audit of a tax return or tax information return that are required to be filed by the financial institution pursuant to Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 18 (commencing with Section 38001) of the Revenue and Taxation Code.

(f) The disclosure to the State Board of Equalization of any of the following:

(1) The information required by Sections 6702, 6703, 8954, 8957, 30313, 30315, 32383, 32387, 38502, 38503, 40153, 40155, 41122, 41123.5, 43443, 43444.2, 44144, 45603, 45605, 46404, 46406, 50134, 50136, 55203, 55205, 60404, and 60407 of the Revenue and Taxation Code.

(2) The financial records in connection with the filing or audit of a tax return required to be filed by the financial institution pursuant to Part 1 (commencing with Section 6001), Part 2 (commencing with Section 7301), Part 3 (commencing with Section 8601), Part 13 (commencing with Section 30001), Part 14 (commencing with Section 32001), and Part 17 (commencing with Section 37001) of Division 2 of the Revenue and Taxation Code.

(3) The amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(g) The disclosure to the Controller of the information required by Section 7853 of the Revenue and Taxation Code.

(h) The disclosure to the Employment Development Department of the amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(i) The disclosure by a construction lender, as defined in Section 3087 of the Civil Code, to the Registrar of Contractors, of information concerning the making of progress payments to a prime contractor requested by the registrar in connection with an investigation under Section 7108.5 of the Business and Professions Code.

(j) Upon receipt of a written request from a district attorney referring to a support order pursuant to Section 11475.1 of the Welfare and Institutions Code, a financial institution shall disclose the following information concerning the account or the person named in the request, whom the district attorney shall identify, whenever possible, by social security number:

(1) If the request states the identifying number of an account at a financial institution, the name of each owner of the account.

(2) Each account maintained by the person at the branch to which the request is delivered, and, if the branch is able to make a computerized search, each account maintained by the person at any other branch of the financial institution located in this state.

(3) For each account disclosed pursuant to paragraphs (1) and (2), the account number, current balance, street address of the branch where the account is maintained, and, to the extent available through the branch's computerized search, the name and address of any other person listed as an owner.

(4) Whenever the request prohibits the disclosure, a financial institution shall not disclose either the request or its response, to an owner of the account or to any other person, except the officers and employees of the financial institution who are involved in responding to the request and to attorneys, auditors, and regulatory authorities who have a need to know in order to perform their duties, and except as disclosure may be required by legal process.

(5) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information in response to a request pursuant to this subdivision, (B) failing to notify the owner of an account, or complying with a request under this paragraph not to disclose to the owner, the request or disclosure under this subdivision, or (C) failing to discover any account owned by the person named in the request pursuant to a computerized search of the records of the financial institution.

(6) The district attorney may request information pursuant to this subdivision only when the district attorney has received at least one of the following types of physical evidence:

(A) Any of the following, dated within the last three years:

(i) Form 599.

(ii) Form 1099.

(iii) A bank statement.

(iv) A check.

(v) A bank passbook.

(vi) A deposit slip.

(vii) A copy of a federal or state income tax return.

(viii) A debit or credit advice.

(ix) Correspondence that identifies the child support obligor by name, the bank, and the account number.

(x) Correspondence that identifies the child support obligor by name, the bank, and the banking services related to the account of the obligor.

(xi) An asset identification report from a federal agency.

(B) A sworn declaration of the custodial parent during the 12 months immediately preceding the request that the person named in the request has had or may have had an account at an office or branch of the financial institution to which the request is made.

(7) Information obtained by a district attorney pursuant to this subdivision shall be used only for purposes that are directly connected within the administration of the duties of the district attorney pursuant to Section 11475.1 of the Welfare and Institutions Code.

(k) (1) As provided in paragraph (1) of subdivision (c) of Section 666 of Title 42 of the United States Code, upon receipt of an administrative subpoena on the current federally approved interstate child support enforcement form, as approved by the federal Office of Management and Budget, a financial institution shall provide the information or documents requested by the administrative subpoena.

(2) The administrative subpoena shall refer to the current federal Office of Management and Budget control number and be signed by a person who states that he or she is an authorized agent of a state or county agency responsible for implementing the child support enforcement program set forth in Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code. A financial institution may rely on the statements made in the subpoena and has no duty to inquire into the truth of any statement in the subpoena.

(3) If the person who signs the administrative subpoena directs a financial institution in writing not to disclose either the subpoena or its response to any owner of an account covered by the subpoena, the financial institution shall not disclose the subpoena or its response to any such owner.

(4) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information or providing documents in response to a subpoena pursuant to this subdivision, (B) failing to notify any owner of an account covered by the subpoena or complying with a request not to disclose to the owner, the subpoena or disclosure under this subdivision, or (C) failing to discover any account owned by the person named in the subpoena pursuant to a computerized search of the records of the financial institution.

SEC. 2. Section 7480 of the Government Code is amended to read:

7480. Nothing in this chapter prohibits any of the following:

(a) The dissemination of any financial information that is not identified with, or identifiable as being derived from, the financial records of a particular customer.

(b) When any police or sheriff's department or district attorney in this state certifies to a bank, credit union, or savings association in writing that a crime report has been filed that involves the alleged fraudulent use of drafts, checks, or other orders drawn upon any bank, credit union, or savings association in this state, the police or sheriff's department or district attorney may request a bank, credit union, or savings association to furnish, and a bank, credit union, or

savings association shall furnish, a statement setting forth the following information with respect to a customer account specified by the police or sheriff's department or district attorney for a period 30 days prior to, and up to 30 days following, the date of occurrence of the alleged illegal act involving the account:

(1) The number of items dishonored.

(2) The number of items paid that created overdrafts.

(3) The dollar volume of the dishonored items and items paid which created overdrafts and a statement explaining any credit arrangement between the bank, credit union, or savings association and customer to pay overdrafts.

(4) The dates and amounts of deposits and debits and the account balance on these dates.

(5) A copy of the signature card, including the signature and any addresses appearing on a customer's signature card.

(6) The date the account opened and, if applicable, the date the account closed.

(7) A bank, credit union, or savings association that provides the requesting party with copies of one or more complete account statements prepared in the regular course of business shall be deemed to be in compliance with paragraphs (1), (2), (3), and (4).

(c) (1) The Attorney General, a supervisory agency, the Franchise Tax Board, the State Board of Equalization, the Employment Development Department, the Controller or an inheritance tax referee when administering the Prohibition of Gift and Death Taxes (Part 8 (commencing with Section 13301) of Division 2 of the Revenue and Taxation Code), a police or sheriff's department or district attorney, a county welfare department when investigating welfare fraud, a county auditor-controller or director of finance when investigating fraud against the county, or the Department of Corporations when conducting investigations in connection with the enforcement of laws administered by the Commissioner of Corporations, from requesting of an office or branch of a financial institution, and the office or branch from responding to a request, as to whether a person has an account or accounts at that office or branch and, if so, any identifying numbers of the account or accounts.

(2) No additional information beyond that specified in this section shall be released to a county welfare department without either the accountholder's written consent or a judicial writ, search warrant, subpoena, or other judicial order.

(3) A county auditor-controller or director of finance who unlawfully discloses information he or she is authorized to request under this subdivision is guilty of the unlawful disclosure of confidential data, a misdemeanor, which shall be punishable as set forth in Section 7485.

(d) The examination by, or disclosure to, any supervisory agency of financial records that relate solely to the exercise of its supervisory

function. The scope of an agency's supervisory function shall be determined by reference to statutes that grant authority to examine, audit, or require reports of financial records or financial institutions as follows:

(1) With respect to the Commissioner of Financial Institutions by reference to Division 1 (commencing with Section 99), Division 1.5 (commencing with Section 4800), Division 2 (commencing with Section 5000), Division 5 (commencing with Section 14000), Division 7 (commencing with Section 18000), Division 15 (commencing with Section 31000), and Division 16 (commencing with Section 33000) of the Financial Code.

(2) With respect to the Controller by reference to Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

(3) With respect to the Administrator of Local Agency Security by reference to Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

(e) The disclosure to the Franchise Tax Board of (1) the amount of any security interest that a financial institution has in a specified asset of a customer or (2) financial records in connection with the filing or audit of a tax return or tax information return that are required to be filed by the financial institution pursuant to Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 18 (commencing with Section 38001) of the Revenue and Taxation Code.

(f) The disclosure to the State Board of Equalization of any of the following:

(1) The information required by Sections 6702, 6703, 8954, 8957, 30313, 30315, 32383, 32387, 38502, 38503, 40153, 40155, 41122, 41123.5, 43443, 43444.2, 44144, 45603, 45605, 46404, 46406, 50134, 50136, 55203, 55205, 60404, and 60407 of the Revenue and Taxation Code.

(2) The financial records in connection with the filing or audit of a tax return required to be filed by the financial institution pursuant to Part 1 (commencing with Section 6001), Part 2 (commencing with Section 7301), Part 3 (commencing with Section 8601), Part 13 (commencing with Section 30001), Part 14 (commencing with Section 32001), and Part 17 (commencing with Section 37001) of Division 2 of the Revenue and Taxation Code.

(3) The amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(g) The disclosure to the Controller of the information required by Section 7853 of the Revenue and Taxation Code.

(h) The disclosure to the Employment Development Department of the amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(i) The disclosure by a construction lender, as defined in Section 3087 of the Civil Code, to the Registrar of Contractors, of information concerning the making of progress payments to a prime contractor requested by the registrar in connection with an investigation under Section 7108.5 of the Business and Professions Code.

(j) Upon receipt of a written request from a district attorney referring to a support order pursuant to Section 11475.1 of the Welfare and Institutions Code, a financial institution shall disclose the following information concerning the account or the person named in the request, whom the district attorney shall identify, whenever possible, by social security number:

(1) If the request states the identifying number of an account at a financial institution, the name of each owner of the account.

(2) Each account maintained by the person at the branch to which the request is delivered, and, if the branch is able to make a computerized search, each account maintained by the person at any other branch of the financial institution located in this state.

(3) For each account disclosed pursuant to paragraphs (1) and (2), the account number, current balance, street address of the branch where the account is maintained, and, to the extent available through the branch's computerized search, the name and address of any other person listed as an owner.

(4) Whenever the request prohibits the disclosure, a financial institution shall not disclose either the request or its response, to an owner of the account or to any other person, except the officers and employees of the financial institution who are involved in responding to the request and to attorneys, auditors, and regulatory authorities who have a need to know in order to perform their duties, and except as disclosure may be required by legal process.

(5) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information in response to a request pursuant to this subdivision, (B) failing to notify the owner of an account, or complying with a request under this paragraph not to disclose to the owner, the request or disclosure under this subdivision, or (C) failing to discover any account owned by the person named in the request pursuant to a computerized search of the records of the financial institution.

(6) The district attorney may request information pursuant to this subdivision only when the district attorney has received at least one of the following types of physical evidence:

(A) Any of the following, dated within the last three years:

(i) Form 599.

(ii) Form 1099.

(iii) A bank statement.

(iv) A check.

(v) A bank passbook.

(vi) A deposit slip.

(vii) A copy of a federal or state income tax return.

(viii) A debit or credit advice.

(ix) Correspondence that identifies the child support obligor by name, the bank, and the account number.

(x) Correspondence that identifies the child support obligor by name, the bank, and the banking services related to the account of the obligor.

(xi) An asset identification report from a federal agency.

(B) A sworn declaration of the custodial parent during the 12 months immediately preceding the request that the person named in the request has had or may have had an account at an office or branch of the financial institution to which the request is made.

(7) Information obtained by a district attorney pursuant to this subdivision shall be used only for purposes that are directly connected within the administration of the duties of the district attorney pursuant to Section 11475.1 of the Welfare and Institutions Code.

(k) (1) As provided in paragraph (1) of subdivision (c) of Section 666 of Title 42 of the United States Code, upon receipt of an administrative subpoena on the current federally approved interstate child support enforcement form, as approved by the federal Office of Management and Budget, a financial institution shall provide the information or documents requested by the administrative subpoena.

(2) The administrative subpoena shall refer to the current federal Office of Management and Budget control number and be signed by a person who states that he or she is an authorized agent of a state or county agency responsible for implementing the child support enforcement program set forth in Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code. A financial institution may rely on the statements made in the subpoena and has no duty to inquire into the truth of any statement in the subpoena.

(3) If the person who signs the administrative subpoena directs a financial institution in writing not to disclose either the subpoena or its response to any owner of an account covered by the subpoena, the financial institution shall not disclose the subpoena or its response to any such owner.

(4) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information or providing documents in response to a subpoena pursuant to this subdivision, (B) failing to notify any owner of an account covered by the subpoena or complying with a request not to disclose to the owner, the subpoena or disclosure under this subdivision, or (C) failing to discover any account owned by the person named in the subpoena pursuant to a computerized search of the records of the financial institution.

(*l*) The dissemination of financial information and records pursuant to an order by a judge upon a written ex parte application

by a peace officer showing specific and articulable facts that there are reasonable grounds to believe that the records or information sought are relevant and material to an ongoing investigation of a felony violation of Section 186.10 or of any felony subject to the enhancement set forth in Section 186.11. The ex parte application shall specify with particularity the records to be produced, which shall be only those of the individual or individuals who are the subject of the criminal investigation. The ex parte application and any subsequent judicial order shall be open to the public as a judicial record unless ordered sealed by the court, for a period of 60 days. The sealing of these records may be extended for 60-day periods upon a showing to the court that it is necessary for the continuance of the investigation. Sixty-day extensions may continue for up to one year or until termination of the investigation of the individual or individuals, whichever is sooner. The records ordered to be produced shall be returned to the peace officer applicant or his or her designee within a reasonable time period after service of the order upon the financial institution. Nothing in this subdivision shall preclude the financial institution from notifying a customer of the receipt of the order for production of records unless a court orders the financial institution to withhold notification to the customer upon a finding that the notice would impede the investigation.

Where a court has made an order to withhold notification to the customer under this paragraph, the peace officer or law enforcement agency who obtained the financial information shall notify the customer by delivering a copy of the ex parte order to the customer within 10 days of the termination of the investigation.

No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (1) disclosing information in response to an order pursuant to this subdivision, or (2) complying with an order under this subdivision not to disclose to the customer, the order, or the dissemination of information pursuant to the order.

SEC. 3. Section 2 of this bill incorporates amendments to Section 7480 of the Government Code proposed by both this bill and AB 976. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 7480 of the Government Code, and (3) this bill is enacted after AB 976, in which case Section 1 of this bill shall not become operative.

CHAPTER 772

An act relating to vehicles.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

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

(a) The safety of the motoring public will be enhanced by the adoption and implementation of a "zero tolerance" policy for drug and alcohol use among commercial truck and bus drivers that exceeds existing legal thresholds.

(b) In 1997, the Department of the California Highway Patrol found drugged or drunk commercial truck drivers to be the primary collision factor in accidents involving 12 deaths and 147 injuries.

(c) While the drug and alcohol testing regimen begun by Chapter 832 of the Statutes of 1994 (Senate Bill 2034, Ayala) has brought about a commendably low rate of positive tests among commercial truck and bus drivers, there were still approximately 10,000 positive drug and alcohol tests for these drivers in California for 1997.

(d) Loopholes may exist in current drug and alcohol testing laws and regulations that (1) allow commercial truck and bus drivers to avoid positive tests by failing to appear for testing or by refusing to submit a test specimen; (2) discourage motor carriers from exchanging required information on the drug and alcohol testing history and safety record of previously employed drivers; (3) make it difficult for potential employers to screen drivers who are "medically unqualified" to operate a commercial truck or bus due to a positive drug or alcohol test; and (4) allow owner operators to continue driving after a positive test result.

(e) While federal and state laws and regulations establish proper testing protocols for drugs and alcohol detection, enforcement actions involving commercial drivers' licenses must originate with the state issuing the license.

(f) The active involvement of both the Department of Motor Vehicles and the Department of the California Highway Patrol is essential to the regulation and enforcement of motor carriers and for the enhancement of public safety.

(g) In the interest of public safety, it is necessary that the issue of zero tolerance for drug and alcohol use among commercial truck and bus drivers be addressed as expeditiously as possible in order for the Legislature to begin devising legislative solutions in the 1999–2000 Regular Session.

SEC. 2. (a) There is hereby created the California Drug-Free Commercial Truck and Bus Driver Task Force, which consists of 17 voting members, as specified in paragraphs (1) and (2) of subdivision (b), and an ex officio, nonvoting member, as specified in paragraph (4) of subdivision (b). Members of the task force shall study and recommend means, including legislation and regulations, for California to close the identified loopholes in drug and alcohol testing of commercial truck and bus drivers in furtherance of the state's "zero tolerance" policy for drug and alcohol use.

(b) (1) The members of the task force shall include one representative of each of the following entities who shall be chosen by the respective entity:

(A) Department of the California Highway Patrol.
(B) Department of Motor Vehicles.
(C) Department of Transportation.
(D) International Brotherhood of Teamsters.
(E) United Transportation Union.
(F) California Trucking Association.
(G) California Bus Association.
(H) Automobile Clubs of California.
(I) California Farm Bureau.
(J) California Transit Association.
(K) Citizens for Safe and Reliable Highways.
(L) California Association of Alcohol Drug Program Executives.
(M) Mothers Against Drunk Driving.
(N) California Association of School Transportation Officials.
(O) California Dump Truck Owners Association.
(P) California School Employees Association.

(2) The Secretary of the Business, Transportation and Housing Agency shall serve as chair of the task force.

(3) Each member specified in paragraphs (1) and (2) is a voting member.

(4) A representative of the United States Department of Transportation shall be invited to participate as an ex officio, nonvoting member.

(c) In conducting its study, the task force is authorized to travel within the state, hold meetings, conduct research, and consult with experts in the field of drug and alcohol testing of commercial truck and bus drivers and the enforcement of drug and alcohol testing laws. The task force shall complete its study and recommendations and submit a printed report of its study and recommendations to the Legislature on or before January 31, 2000.

(d) It is the intent of the Legislature that the task force complete its work in as timely a manner as possible and comply with all the timelines established in this section. Should any governmental member of the task force be replaced, he or she shall coordinate the task force's efforts with his or her successor representative.

(e) This section shall become inoperative on February 1, 2000, and as of January 1, 2001 is repealed.

CHAPTER 773

An act to amend Sections 18400.1, 18424, and 18502 of the Health and Safety Code, relating to mobilehome parks, and making an appropriation therefor.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. Section 18400.1 of the Health and Safety Code is amended to read:

18400.1. (a) The enforcement agency shall enter and inspect all mobilehome parks, as required under this part, at least once every eight years, to ensure enforcement of this part and the regulations adopted pursuant to this part. Any notices of violation of this part shall be issued pursuant to Chapter 3.5 (commencing with Section 18420).

(b) In developing its program for inspections, the enforcement agency shall give first priority to inspections of those mobilehome parks which it believes may have the most serious violations of this part.

(c) Nothing in this part shall be construed to allow the enforcement agency to issue a notice for a violation of existing laws or regulations which were not violations of the laws or regulations at the time the mobilehome park received its original permit to operate or at the time the manufactured home or mobilehome received its original installation permit, unless the enforcement agency determines that a condition of the park, manufactured home, or mobilehome endangers the life, limb, health, or safety of the public or occupants thereof.

(d) 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.

(e) Any local enforcement agency that relinquishes enforcement authority over to the department shall remit to the department fees collected pursuant to paragraph (2) of subdivision (c) of Section 18502 that have not been expended for purposes of that paragraph.

(f) Each local enforcement agency that has assumed enforcement authority and has collected fees pursuant to paragraph (2) of subdivision (b) of Section 18502, shall provide the department, prior to March 1, 1999, with a status report on its specific inspection program after completion of the program's first seven-year cycle. The report shall include information on the number of parks and spaces in its jurisdiction, the number of parks and spaces that have been inspected, the number and types of notices of violations issued against the parks, the number and types of notices of violations issued against the residents, the number of notices of violations appealed, and the amount of fees collected and expended for the purpose of the inspection program.

(g) Notwithstanding Section 7550.5 of the Government Code, the department shall, prior to May 1, 1999, submit a report to the Senate Committee on Local Government, the Senate Select Committee on Mobile and Manufactured Homes, and the Assembly Committee on

Housing and Community Development on the status of the mobilehome park inspection program after completion of the program's first seven-year cycle. The report shall include information on the total number of parks and spaces in the state, the number of parks and spaces that have been inspected, the number of notices of violations issued against the parks, the number of notices of violations issued against the residents and the number of notices of violations appealed, and the amount of fees collected and expended for the purpose of the inspection program. The report shall separate the information according to parks inspected by local enforcement agencies, parks inspected by the department, and total program activity. The report shall include any recommendations for changes to make the inspection program operate more effectively in the event that the program is extended beyond January 1, 2000.

SEC. 2. Section 18424 of the Health and Safety Code is amended to read:

18424. This chapter 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. 3. Section 18502 of the Health and Safety Code, as amended by Section 2 of Chapter 674 of the Statutes of 1994, is amended to read:

18502. Fees as applicable shall be submitted for permits:

(a) Fees for a permit to conduct any construction subject to this part as determined by the schedule of fees adopted by the department.

(b) Plan checking fees equal to one-half of the construction, plumbing, mechanical, and electrical permit fees, except that the minimum fee shall be ten dollars ($10).

(c) (1) Except for a temporary recreational vehicle park, an annual operating permit fee of twenty-five dollars ($25) and an additional two dollars ($2) per lot or two dollars ($2) per camping party for the maximum number of camping parties to be accommodated at any one time in an incidental camping area.

(2) Except for a special occupancy park, an additional annual fee of four dollars ($4) per lot shall be paid to the department or the local enforcement agency, as appropriate, at the time of payment of the annual operating fee. All revenues derived from this fee shall be used exclusively for the inspection of mobilehome parks and mobilehomes to determine compliance with the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200)) and any regulations adopted pursuant to the act.

(3) The Legislature hereby finds and declares that the health and safety of mobilehome park occupants is a matter of public interest and concern and that the fee paid pursuant to paragraph (2) shall be used exclusively for the inspection of mobilehome parks and mobilehomes to ensure that the living conditions of mobilehome park occupants meet the health and safety standards of this part and the regulations adopted pursuant thereto. Therefore,

notwithstanding any other provisions of law or local ordinance, rule, regulation, or initiative measure to the contrary, the holder of the permit to operate the mobilehome park shall be entitled to directly charge one-half of the per lot additional annual fee specified herein to each homeowner, as defined in Section 798.9 of the Civil Code. In that event, the holder of the permit to operate the mobilehome park shall be entitled to directly charge each homeowner for one-half of the per lot additional annual fee at the next billing for the rent and other charges immediately following the payment of the additional fee to the department or local enforcement agency.

(d) Temporary recreational vehicle park operating permit fee of twenty-five dollars ($25), with no additional fee for the lots.

(e) Change in name fee or transfer of ownership or possession fee of ten dollars ($10).

(f) Duplicate permit fee or amended permit fee of ten dollars ($10).

(g) 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. 4. Section 18502 of the Health and Safety Code, as amended by Section 3 of Chapter 674 of the Statutes of 1994, is amended to read:

18502. Fees as applicable shall be submitted for permits:

(a) Fees for a permit to conduct any construction subject to this part as determined by the schedule of fees adopted by the department.

(b) Plan checking fees equal to one-half of the construction, plumbing, mechanical, and electrical permit fees, except that the minimum fee shall be ten dollars ($10).

(c) Except for a temporary recreational vehicle park, an annual operating permit fee of twenty-five dollars ($25) and an additional two dollars ($2) per lot or two dollars ($2) per camping party for the maximum number of camping parties to be accommodated at any one time in an incidental camping area.

(d) Temporary recreational vehicle park operating permit fee of twenty-five dollars ($25), with no additional fee for the lots.

(e) Change in name fee or transfer of ownership or possession fee of ten dollars ($10).

(f) Duplicate permit fee or amended permit fee of ten dollars ($10).

(g) This section shall become operative on January 1, 2000.

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 774

An act to amend Sections 25284 and 25292.3 of the Health and Safety Code, relating to underground storage tanks, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. Section 25284 of the Health and Safety Code is amended to read:

25284. (a) (1) Except as provided in subdivision (c), no person shall own or operate an underground storage tank unless a permit for its operation has been issued by the local agency to the owner or operator of the tank, or a unified program facility permit has been issued by the local agency to the owner or operator of the unified program facility on which the tank is located.

(2) If the operator is not the owner of the tank, or if the permit is issued to a person other than the owner or operator of the tank, the permittee shall ensure that both the owner and the operator of the tank are provided with a copy of the permit.

(3) If the permit is issued to a person other than the operator of the tank, that person shall do all of the following:

(A) Enter into a written agreement with the operator of the tank to monitor the tank system as set forth in the permit.

(B) Provide the operator with a copy or summary of Section 25299 in the form that the board specifies by regulation.

(C) Notify the local agency of any change of operator.

(b) Each local agency shall prepare a form that provides for the acceptance of the obligations of a transferred permit by any person who is to assume the ownership of an underground storage tank from the previous owner and is to be transferred the permit to operate the tank. That person shall complete the form accepting the obligations of the permit and submit the completed form to the local agency within 30 days from the date that the ownership of the underground storage tank is to be transferred. A local agency may review and modify, or terminate, the transfer of the permit to operate the underground storage tank, pursuant to the criteria specified in subdivision (a) of Section 25295, upon receiving the completed form.

(c) Any person assuming ownership of an underground storage tank used for the storage of hazardous substances for which a valid operating permit has been issued shall have 30 days from the date of assumption of ownership to apply for an operating permit pursuant to Section 25286 or, if accepting a transferred permit, shall submit to the local agency the completed form accepting the obligations of the transferred permit, as specified in subdivision (b). During the period from the date of application until the permit is issued or refused, the person shall not be held to be in violation of this section.

(d) A permit issued pursuant to this section shall apply and require compliance with all applicable regulations adopted by the board pursuant to Section 25299.3.

(e) Except as provided in subdivision (g), a permit issued for a petroleum underground storage tank system that meets the requirements of Section 25291 or subdivisions (d) and (e) of Section 25292 and related regulations adopted pursuant to Section 25299.3 shall include an upgrade compliance certificate, the color, size, and content of which shall be specified by the board, that documents that the petroleum underground storage tank system meets the requirements of Section 25291 or subdivisions (d) and (e) of Section 25292 and related regulations. The owner shall place the upgrade compliance certificate in a conspicuous location that can be readily viewed by any person depositing petroleum into the underground storage tank system.

(f) On or before December 22, 1998, the board shall notify all persons who may deliver petroleum to an underground storage tank of where they can obtain a list of underground storage tank facilities that have been issued an upgrade compliance certificate. Local agencies shall maintain a list of underground storage tank facilities that have been issued an upgrade compliance certificate and shall provide this information to anyone requesting it.

(g) (1) Notwithstanding subdivision (e), if the appropriate local agency responsible for issuing a permit to own or operate an underground storage tank, including the upgrade compliance certificate required by subdivision (e), receives authorization from the board for an extension pursuant to subdivision (k), an owner or operator located in the jurisdiction of that local agency may certify that the tank or tanks are in compliance with the requirements of Section 25291 or subdivisions (d) and (e) of Section 25292, and the related regulations adopted pursuant to Section 25299.3.

(2) A self-certification by an operator pursuant to this subdivision shall be valid for a period not to exceed 90 days from the date the board grants the local agency the authority to extend applicable deadlines pursuant to subdivision (k), or the date the local agency completes its inspection and issues or denies an upgrade compliance certificate, whichever date is earlier. Under no circumstances is self-certification valid after March 22, 1999. After March 22, 1999, an upgrade compliance certificate, as issued by the appropriate local

agency, is required before petroleum may be deposited into an underground storage tank that meets the requirements set forth in paragraph (1).

(h) An owner or operator certifying compliance pursuant to subdivision (g) shall place on the underground storage tank system, in plain view, the following self-certification statement, with the operator's signature:

"I certify under penalty of perjury that this tank meets the applicable requirements set forth in subdivision (g) of Section 25284 of the Health and Safety Code."

(i) Any owner or operator who certifies that an underground storage tank meets the requirements set forth in subdivision (g) which in fact had not been met at the time the statement in subdivision (h) was posted shall be subject to a civil penalty of up to twenty-five thousand dollars ($25,000) for each facility for each day of violation.

(j) This section does not supersede, limit, or supplant any local control duly adopted pursuant to Section 13869.7 or Article 2 (commencing with Section 50020) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code.

(k) On or before December 1, 1998, a local agency responsible for issuing a permit to own or operate an underground storage tank, including the upgrade compliance certificate required by subdivision (e), may petition the board for a 90 day extension of the deadline for compliance with subdivisions (e) and (f). The board, acting itself, or by order of the executive director, shall either approve or deny the petition within 30 days of receiving the petition. The local agency shall include in its petition an explanation of the circumstances necessitating the extension and the steps the local agency will take to address those circumstances. The board shall deny the petition if the board finds that the local agency does not need additional time to meet the requirements of subdivisions (e) and (f).

SEC. 2. Section 25292.3 of the Health and Safety Code is amended to read:

25292.3. (a) On and after January 1, 1999, no person shall deposit petroleum into an underground storage tank system unless the underground storage tank system meets the requirements of Section 25291 or subdivisions (d) and (e) of Section 25292 and related regulations adopted pursuant to Section 25299.3.

(b) Any person depositing petroleum into an underground storage tank system shall verify that the system meets the requirements of Section 25291 or subdivisions (d) and (e) of Section 25292, and related regulations adopted pursuant to Section 25299.3, by taking one of the following actions:

(1) Viewing the upgrade compliance certificate for the petroleum underground storage tank system displayed pursuant to subdivision (e) of Section 25284 or viewing a statement placed on the

underground tank system pursuant to subdivision (h) of Section 25284.

(2) Obtaining written verification from the local agency that the petroleum underground storage tank system is on a list maintained by a local agency pursuant to subdivision (f) of Section 25284.

(3) Obtaining a correct copy of the upgrade compliance certificate from the owner or operator of the petroleum underground storage tank 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.

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 extend, as soon as possible, the deadline that local agencies are required to meet in certifying that underground storage tanks are upgraded, it is necessary that this act take effect immediately.

CHAPTER 775

An act to amend Section 1255.5 of, and to add Section 1255.6 to, the Health and Safety Code, relating to perfusion.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) The citizens of California are entitled to the protection of their health, safety, and welfare from the unqualified or unprofessional practice of perfusion.

(b) The practice of perfusion by unauthorized, unqualified, unprofessional, or incompetent persons is a threat to the public.

(c) Perfusionists make split-second decisions when operating the heart-lung machine which directly affect the cardiovascular and respiratory condition and surgical outcome for a patient.

(d) Almost every form of major thoracic or cardiovascular surgery involves the participation of a perfusionist.

(e) The practice of perfusion has a direct and immediate impact on the outcome and mortality of patients undergoing major thoracic or cardiovascular surgery.

(f) The practice of perfusion is continually evolving to include more sophisticated and demanding patient care activities.

(g) The purpose of Chapter 5.67 (commencing with Section 2590) of Division 2 of the Business and Professions Code is to protect the public by doing both of the following:

(1) Establishing minimum standards for education, training, and competency for persons engaged in the practice of perfusion and for the performance of perfusion services in a manner that provides for the continued evolution of the practice of perfusion.

(2) Ensuring that the privilege of practicing in the field of perfusion is entrusted only to those whose qualifications and scope of practice are defined by Chapter 5.67 (commencing with Section 2590) of Division 2 of the Business and Professions Code.

SEC. 2. Section 1255.5 of the Health and Safety Code is amended to read:

1255.5. For purposes of Section 1255, the following definitions apply:

(a) "Cardiac catheterization" includes an intravascular insertion of a catheter into the heart for the primary definition and diagnosis of an anatomic cardiac lesion. For the purposes of this definition, the insertion of a Swan-Ganz thermodilution cardiac output catheter, a venous line, and a temporary pacemaking electrode catheter are excluded.

(b) "Cardiac surgery" means surgery on the heart or great vessels requiring a thoracotomy and extracorporeal circulation.

(c) "Cardiovascular surgery service" means a program of a general acute care hospital which has the capability of performing cardiac catheterizations and cardiac surgery as defined in this section. Under no circumstances shall there exist in a general acute care hospital a cardiac surgery service without a cardiac catheterization laboratory service.

(d) "Cardiac catheterization laboratory service" means a program of a general acute care hospital which has the capability of performing cardiac catheterization. Cardiac catheterization laboratory service does not include pediatric cardiac catheterization laboratory service.

(e) "Pediatric cardiac surgery service" means a program of a general acute care hospital which has the capability of performing cardiac catheterization and cardiac surgery, as defined in this section, for the diagnosis and treatment of congenital defects in children.

Cardiac catheterization for pediatric patients shall be performed only in a general acute care hospital that has the capability to perform cardiac surgery on pediatric patients.

(f) "Intensive care newborn nursery services" means the provision of comprehensive and intensive care for all contingencies of the newborn infant, including intensive, intermediate, and continuing care. Policies, procedures, and space requirements for intensive, intermediate, and continuing care services shall be based upon the standards and recommendations of the American Academy of Pediatrics Guidelines for Perinatal Care, 1983.

SEC. 3. Section 1255.6 is added to the Health and Safety Code, to read:

1255.6. During cardiovascular surgery, a perfusionist, as defined by Chapter 5.67 (commencing with Section 2590) of Division 2 of the Business and Professions Code, shall operate the extracorporeal equipment under the immediate supervision of the cardiovascular surgeon or anesthesiologist. The determination of the qualifications and competence of a perfusionist, and the awarding of appropriate privileges, shall be the responsibility of the general acute care hospital or its medical staff.

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 776

An act to amend Section 1024 of, and to repeal Section 1025 of, the Government Code, and to repeal Chapter 9 (commencing with Section 540) of Title 13 of Part 1 of the Penal Code, relating to public officers and employees.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. Section 1024 of the Government Code is amended to read:

1024. Any person who holds any office or employment under the state or any county, city, district or other political or governmental unit of the state and who has taken any oath described in Section 1023 is relieved of ineligibility to office or employment if he or she petitions any superior court for leave to renounce all promises or obligations assumed by him or her under that oath, and renounces all those promises or obligations before a judge of that court.

Any other person who has taken or hereafter takes any such oath may at any time be relieved of ineligibility by petitioning any superior court and renouncing all such promises or obligations in like manner.

SEC. 2. Section 1025 of the Government Code is repealed.

SEC. 3. Chapter 9 (commencing with Section 540) of Title 13 of Part 1 of the Penal Code is repealed.

CHAPTER 777

An act to add Section 1586 to the Fish and Game Code, relating to fish and game, and making an appropriation therefor.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. Section 1586 is added to the Fish and Game Code, to read:

1586. The Upper Newport Bay Ecological Reserve Maintenance and Preservation Fund is hereby created in the State Treasury.

SEC. 2. The sum of two hundred thousand dollars ($200,000) is hereby appropriated annually from the General Fund to the Upper Newport Bay Ecological Reserve Maintenance and Preservation Fund for expenditure by the Department of Fish and Game for purposes relating to the maintenance and preservation of the Upper Newport Bay Ecological Reserve.

CHAPTER 778

An act to amend Section 1261.5 of, and to add Section 1261.6 to, the Health and Safety Code, relating to health facilities.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. Section 1261.5 of the Health and Safety Code is amended to read:

1261.5. (a) The number of oral dosage form or suppository form drugs provided by a pharmacy to a health facility licensed pursuant to subdivision (c), (d), or both (c) and (d), of Section 1250 for storage in a secured emergency supplies container, pursuant to Section 4035 of the Business and Professions Code, shall be limited to 24. The State Department of Health Services may limit the number of doses of each drug available to not more than four doses of any separate drug dosage form in each emergency supply.

(b) Any limitations established pursuant to subdivision (a) on the number and quantity of oral dosage or suppository form drugs provided by a pharmacy to a health facility licensed pursuant to subdivision (c), (d), or both (c) and (d) of Section 1250 for storage in a secured emergency supplies container shall not apply to an automated drug delivery system, as defined in Section 1261.6, when a pharmacist controls access to the drugs. This subdivision shall become operative July 1, 1999.

SEC. 2. Section 1261.6 is added to the Health and Safety Code, to read:

1261.6. (a) For purposes of this section and Section 1261.5, an "automated drug delivery system" means a mechanical system that performs operations or activities, other than compounding or administration, relative to the storage, dispensing, or distribution of drugs. An automated drug delivery system shall collect, control, and maintain all transaction information to accurately track the movement of drugs into and out of the system for security, accuracy, and accountability.

(b) Transaction information shall be made readily available in a written format for review and inspection by individuals authorized by law. These records shall be maintained in the facility for a minimum of three years.

(c) Individualized and specific access to automated drug delivery systems shall be limited to facility and contract personnel authorized by law to administer drugs.

(d) (1) The facility and the pharmacy shall develop and implement written policies and procedures to ensure safety, accuracy, accountability, security, patient confidentiality, and maintenance of the quality, potency, and purity of stored drugs. Policies and procedures shall define access to the automated drug delivery system and limits to access to equipment and drugs.

(2) All policies and procedures shall be maintained at the location where the automated drug delivery system is being used.

(e) Drugs removed from the automated drug delivery system shall be limited to the following:

(1) A new drug order given by a prescriber for a patient of the facility for administration prior to the next scheduled delivery from the pharmacy, or 72 hours, whichever is less. The drugs shall be retrieved only upon authorization by a pharmacist and after the pharmacist has reviewed the prescriber's order and the patient's profile for potential contraindications and adverse drug reactions.

(2) Drugs that a prescriber has ordered for a patient on an as-needed basis, if the utilization and retrieval of those drugs are subject to ongoing review by a pharmacist.

(3) Drugs designed by the patient care policy committee or pharmaceutical service committee of the facility as emergency drugs or acute onset drugs. These drugs may be retrieved from an automated drug delivery system pursuant to the order of a prescriber for emergency or immediate administration to a patient of the facility. Within 48 hours after retrieval under this paragraph, the case shall be reviewed by a pharmacist.

(f) The stocking of an automated drug delivery system shall be performed by a pharmacist. If the automated drug delivery system utilizes removable pockets or drawers, or similar technology, the stocking system may be done outside of the facility and be delivered to the facility if all of the following conditions are met:

(1) The task of placing drugs into the removable pockets or drawers is performed by a pharmacist or by, an intern pharmacist, or a pharmacy technician working under the direct supervision of a pharmacist.

(2) The removable pockets or drawers are transported between the pharmacy and the facility in a secure tamper-evident container.

(3) The facility, in conjunction with the pharmacy, has developed policies and procedures to ensure that the pockets or drawers are properly placed into the automated drug delivery system.

(g) Review of the drugs contained within, and the operation and maintenance of, the automated drug delivery system shall be done in accordance with law and shall be the responsibility of the pharmacy. The review, which shall be conducted on a monthly basis, by a pharmacist and shall include a physical inspection of the drugs in the automated drug delivery system, an inspection of the automated drug delivery system machine for cleanliness, and a review of all transaction records in order to verify the security and accountability of the system.

(h) Drugs dispensed from an automated drug delivery system that meets the requirements of this section shall not be subject to the labeling requirements of Section 4076 of the Business and Professions Code or Section 111480 of this code if the drugs to be placed into the automated drug delivery system are in unit dose packaging or unit of use and if the information required by Section 4076 of the Business and Professions Code and Section 111480 of this code is readily available at the time of drug administration.

(h) This section shall become operative July 1, 1999.

CHAPTER 779

An act to add Section 1785.135 to the Civil Code, to add Article 6 (commencing with Section 765.010) to Chapter 4 of Title 10 of Part 2 of the Code of Civil Procedure, and to amend Sections 6223 and 27201 of the Government Code, relating to liens and encumbrances.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. Section 1785.135 is added to the Civil Code, to read:

1785.135. No consumer credit reporting agency shall make any consumer credit report with respect to a document which acts as a lien or other encumbrance, including, but not limited to, a notice of lis pendens, but which has together with it a court order striking or releasing the lien or other encumbrance pursuant to Section 765.030 of the Code of Civil Procedure.

SEC. 2. Article 6 (commencing with Section 765.010) is added to Chapter 4 of Title 10 of Part 2 of the Code of Civil Procedure, to read:

Article 6. Liens and Encumbrances

765.010. A public officer or employee whose property is subject to a lien or other encumbrance in violation of Section 6223 of the Government Code may petition the superior court of the county in which the person resides or in which the property is located for an order, which may be granted ex parte, directing the lien or other encumbrance claimant to appear at a hearing before the court and show cause why the lien or other encumbrance should not be stricken and other relief provided by this article should not be granted. The court shall schedule the hearing no earlier than 14 days after the date of the order. The scheduled date of the hearing shall allow adequate time for notice of the hearing.

765.020. A petition under this article shall state the grounds upon which relief is requested, and shall be supported by the affidavit of the petitioner or the petitioner's attorney setting forth a concise statement of the facts upon which the motion is based.

The petition and affidavit shall be in substantially the form prescribed by the Judicial Council.

765.030. If the court determines that the lien or other encumbrance is in violation of Section 6223 of the Government Code, the court shall issue an order striking and releasing the lien or other encumbrance and may award costs and reasonable attorney fees to

the petitioner to be paid by the lien or other encumbrance claimant. If the court determines that the lien or other encumbrance is valid, the court shall issue an order so stating and may award costs and reasonable attorney fees to the encumbrance claimant to be paid by the petitioner. The court may direct that such an order shall be recorded.

765.040. Any lien or encumbrance claimant who records or files, or directs another to record or file, a lien or other encumbrance in violation of Section 6223 of the Government Code shall be liable to the owner of the property bound by the lien or other encumbrance for a civil penalty of up to five thousand dollars ($5,000).

765.050. This article does not apply to a document which acts as a claim of encumbrance by a financial institution, as defined in subdivision (a) of Section 14161 of the Penal Code or Section 481.113 of this code, or a public entity, as defined in Section 481.200 of this code.

765.060. If a lien or other encumbrance is recorded or filed in violation of Section 6223 of the Government Code, the state or local agency that employs the public officer or employee may provide counsel for the public officer or employee in an action brought pursuant to Section 765.010.

SEC. 3. Section 6223 of the Government Code, as added by Chapter 211 of the Statutes of 1998, is amended to read:

6223. (a) No person shall file or record a lawsuit, lien, or other encumbrance, including, but not limited to, a notice of lis pendens, against a public officer or employee, knowing it is false, with the intent to harass the officer or employee or to influence or hinder the public officer or employee in discharging his or her official duties.

(b) This section shall apply only to lawsuits, liens, or other encumbrances pertaining to actions that arise in the course and scope of the public officer's or employee's duties.

(c) Any person who knowingly records or files, or directs another to record or file, a lawsuit, lien, or encumbrance in violation of subdivision (a) shall be liable to the person subject to the lawsuit, or the owner of the property bound by the lien or other encumbrance for a civil penalty not to exceed five thousand dollars ($5,000).

SEC. 4. Section 27201 of the Government Code is amended to read:

27201. (a) The recorder shall, upon payment of proper fees and taxes, accept for recordation any instrument, paper, or notice which is authorized or required by statute or court order to be recorded, if the instrument, paper, or notice contains sufficient information to be indexed as provided by statute, meets recording requirements of state statutes and local ordinances, and is photographically reproducible. The county recorder shall not refuse to record any instrument, paper, or notice which is authorized or required by statute or court order to be recorded on the basis of its lack of legal sufficiency.

"Photographically reproducible," for purposes of this division, means all instruments, papers, or notices which comply with standards as recommended by the American National Standards Institute or the Association for Information and Image Management for recording of records.

(b) Each instrument, paper, or notice shall contain an original signature or signatures, except as otherwise provided by law, or be a certified copy of the original.

CHAPTER 780

An act relating to payment of claims, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. The sum of eighty-six million two hundred eighty-six thousand three hundred eighty-one dollars and three cents ($86,286,381.03) is hereby appropriated from the General Fund to the Controller for allocation as follows:

(a) Nineteen million three hundred forty-eight thousand dollars ($19,348,000) for payment of claims from local agencies seeking reimbursement for state-mandated costs, according to the following schedule:

(1) Five million two hundred twenty-seven thousand dollars ($5,227,000) for the payment of claims from school districts and county offices of education pursuant to subdivision (c) of Section 48902 of the Education Code (law enforcement notifications), for costs incurred from July 1, 1994, to June 30, 1999, inclusive.

(2) Two million six hundred fourteen thousand dollars ($2,614,000) for the payment of claims from counties or cities and counties, pursuant to paragraph (12) of subdivision (a) of Section 679.02 of the Penal Code (crime victims' rights), for costs incurred from January 1, 1996, to June 30, 1999, inclusive.

(3) Sixteen thousand dollars ($16,000) for the payment of claims from cities, counties, cities and counties, or special districts, pursuant to Section 832.9 of the Penal Code (threats against peace officers), for costs incurred from July 1, 1995, to June 30, 1999, inclusive.

(4) One million two hundred fifteen thousand dollars ($1,215,000) for the payment of claims from school districts, county boards of education, or community colleges, pursuant to Section 3003 of the Elections Code (absentee ballots), for costs incurred from July 1, 1996, to June 30, 1999, inclusive.

(5) Eight million three hundred forty-seven thousand dollars ($8,347,000) for the payment of claims from cities or counties, pursuant to Section 2625 of the Penal Code (prisoner parental rights), for costs incurred from January 1, 1992, to June 30, 1999, inclusive.

(6) One million nine hundred twenty-nine thousand dollars ($1,929,000) for the payment of claims from counties, pursuant to Section 12979 of the Food and Agricultural Code (pesticide use reports), for costs incurred from July 1, 1990, to June 30, 1999, inclusive.

(7) For the purpose of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by paragraphs (1) and (4) of this subdivision shall be deemed to be "General Fund revenues appropriated for school districts," 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.

(b) Four million one hundred fourteen thousand dollars ($4,114,000) to provide reimbursement to local agencies of costs incurred for the period of July 1, 1997, to August 16, 1997, inclusive, for those state-mandated programs that were not suspended pursuant to Section 17581 of the Government Code for this time period, according to the following schedule:

(1) Four thousand dollars ($4,000) to provide reimbursement of costs incurred pursuant to Chapter 1032 of the Statutes of 1980 (deaf teletype equipment).

(2) Three thousand dollars ($3,000) to provide reimbursement of costs incurred pursuant to Chapter 1042 of the Statutes of 1985 (election materials).

(3) Thirty-five thousand dollars ($35,000) to provide reimbursement of costs incurred pursuant to Chapter 494 of the Statutes of 1979 (handicapped voter access).

(4) One hundred fifty-five thousand dollars ($155,000) to provide reimbursement of costs incurred pursuant to Chapter 77 of the Statutes of 1978 (absentee ballots).

(5) Three thousand dollars ($3,000) to provide reimbursement of costs incurred pursuant to Chapter 1330 of the Statutes of 1976 (local coastal plans).

(6) Two hundred ninety-six thousand dollars ($296,000) to provide reimbursement of costs incurred pursuant to Chapter 1357 of the Statutes of 1976 (guardianship/conservatorship).

(7) Two hundred fifty-six thousand dollars ($256,000) to provide reimbursement of costs incurred pursuant to Chapter 332 of the Statutes of 1981 (victim statements, minors).

(8) Nine hundred one thousand dollars ($901,000) to provide reimbursement of costs incurred pursuant to Sections 3401 to 3410, inclusive, of Title 8 of the California Code of Regulations (structural and wildland firefighter safety clothing and equipment).

(9) Six hundred ninety-three thousand dollars ($693,000) to provide reimbursement of costs incurred pursuant to subdivision (c) of Section 3401 of Title 8 of the California Code of Regulations (personal alarm devices).

(10) Thirty-eight thousand dollars ($38,000) to provide reimbursement of costs incurred pursuant to Chapter 48 of the Statutes of 1987 (property taxation).

(11) Thirty-eight thousand dollars ($38,000) to provide reimbursement of costs incurred pursuant to Chapter 1281 of the Statutes of 1980 (involuntary lien notices).

(12) Fourteen thousand dollars ($14,000) to provide reimbursement of costs incurred pursuant to Chapter 1334 of the Statutes of 1987 (CPR pocket masks).

(13) One million four hundred eighty-two thousand dollars ($1,482,000) to provide reimbursement of costs incurred pursuant to Chapter 1609 of the Statutes of 1984 (domestic violence information).

(14) One hundred ninety-five thousand dollars ($195,000) to provide reimbursement of costs incurred pursuant to Chapter 980 of the Statutes of 1984 (court audits and proration of fines).

(15) One thousand dollars ($1,000) to provide reimbursement of costs incurred pursuant to Chapter 845 of the Statutes of 1978 (Filipino employees).

(c) Sixty-two million eight hundred twenty-three thousand dollars ($62,823,000) to pay for deficiencies in prior year appropriations, according to the following schedule:

(1) Five million eight hundred ten thousand dollars ($5,810,000) to pay for deficiencies in the 1995 and 1997 Budget Acts, for costs incurred pursuant to Chapter 1399 of the Statutes of 1976 (child abduction and recovery/custody of minors).

(2) One hundred fifty-three thousand dollars ($153,000) to pay for deficiencies in the 1996 and 1997 Budget Acts, for costs incurred pursuant to Chapter 337 of the Statutes of 1990 (stolen vehicle notification).

(3) One million six hundred twenty-two thousand dollars ($1,622,000) to pay for deficiencies in the 1995 claims bill (Chapter 914 of the Statutes of 1995) and in the 1996 and 1997 Budget Acts, for costs incurred pursuant to Chapter 1105 of the Statutes of 1992 (misdemeanors: booking and fingerprinting).

(4) Four million four hundred seventy-five thousand dollars ($4,475,000) to pay for deficiencies in the 1996 claims bill (Chapter 748 of the Statutes of 1996), for costs incurred pursuant to Chapter 1456 of the Statutes of 1988 (missing persons reports III).

(5) One million one hundred eighty-five thousand dollars ($1,185,000) to pay for deficiencies in the 1995, 1996, and 1997 Budget

Acts, for costs incurred pursuant to Chapter 77 of the Statutes of 1978 (absentee ballots).

(6) Three thousand dollars ($3,000) to pay for deficiencies in the 1995 and 1996 Budget Acts, for costs incurred pursuant to Chapter 704 of the Statutes of 1975 (voter registration).

(7) One hundred seventy-seven thousand dollars ($177,000) to pay for deficiencies in the 1995 and 1996 Budget Acts, for costs incurred pursuant to Chapter 1422 of the Statutes of 1982 (permanent absent voter).

(8) Seven million three hundred thirty-five thousand dollars ($7,335,000) to pay for deficiencies in the 1996 and 1997 Budget Acts, for costs incurred pursuant to Chapter 1490 of the Statutes of 1984 (business tax reports).

(9) One hundred nine thousand dollars ($109,000) to pay for deficiencies in the 1996 Budget Act, for costs incurred pursuant to Chapter 916 of the Statutes of 1991 (Pacific Beach safety).

(10) One hundred fifty-five thousand dollars ($155,000) to pay for deficiencies in the 1995 and 1996 Budget Acts, for costs incurred pursuant to Chapter 955 of the Statutes of 1989 (SIDS autopsies).

(11) One hundred seventy thousand dollars ($170,000) to pay for deficiencies in the 1996 claims bill (Chapter 748 of the Statutes of 1996), for costs incurred pursuant to Chapter 1603 of the Statutes of 1990 (perinatal services).

(12) One hundred nine thousand dollars ($109,000) to pay for deficiencies in the 1996 claims bill (Chapter 748 of the Statutes of 1996), for costs incurred pursuant to Chapter 268 of the Statutes of 1991 (SIDS contacts by local health offices).

(13) Two hundred ninety-two thousand dollars ($292,000) to pay for deficiencies in the 1995 and 1996 Budget Acts, for costs incurred pursuant to Chapter 1088 of the Statutes of 1988 (AIDS search warrants).

(14) Six thousand dollars ($6,000) to pay for deficiencies in the 1996 Budget Act, for costs incurred pursuant to Chapter 102 of the Statutes of 1981 (Medi-Cal beneficiary death notices).

(15) One hundred sixty-one thousand dollars ($161,000) to pay for deficiencies in the 1995 claims bill (Chapter 914 of the Statutes of 1995) and in the 1996 Budget Act, for costs incurred pursuant to Chapter 1597 of the Statutes of 1988 (AIDS testing).

(16) Eighty-one thousand dollars ($81,000) to pay for deficiencies in the 1996 and 1997 Budget Acts, for costs incurred pursuant to Chapter 644 of the Statutes of 1980 (judicial proceedings).

(17) Thirty-four thousand dollars ($34,000) to pay for deficiencies in the 1995 and 1996 Budget Acts, for costs incurred pursuant to Chapter 694 of the Statutes of 1975 (attorney fees).

(18) One thousand dollars ($1,000) to pay for deficiencies in the 1996 Budget Act, for costs incurred pursuant to Chapter 1253 of the Statutes of 1980 (MR representative).

(19) Twenty thousand dollars ($20,000) to pay for deficiencies in the 1996 and 1997 Budget Acts, for costs incurred pursuant to Chapter 1304 of the Statutes of 1980 (conservatorships).

(20) Eleven million two hundred ninety-eight thousand dollars ($11,298,000) to pay for deficiencies in the 1996 claims bill (Chapter 748 of the Statutes of 1996), for costs incurred pursuant to Chapter 1114 of the Statutes of 1979 (not guilty by reason of insanity (NGI)).

(21) One thousand dollars ($1,000) to pay for deficiencies in the 1996 Budget Act, for costs incurred pursuant to Chapter 498 of the Statutes of 1977 (coroners' responsibilities).

(22) Eighty-one thousand dollars ($81,000) to pay for deficiencies in the 1996 Budget Act, for costs incurred pursuant to Chapter 1036 of the Statutes of 1978 (MDSO recommitment).

(23) Twenty-two million six hundred eight thousand dollars ($22,608,000) to pay for deficiencies in the 1996 and 1997 Budget Acts, for costs incurred pursuant to Chapter 1747 of the Statutes of 1984 (services to handicapped students).

(24) Three hundred eighty-six thousand dollars ($386,000) to pay for deficiencies in the 1995, 1996, and 1997 Budget Acts, for costs incurred pursuant to Chapter 1171 of the Statutes of 1989 (peace officers' cancer presumption).

(25) Three hundred fifty-one thousand dollars ($351,000) to pay for deficiencies in the 1996 Budget Act, for costs incurred pursuant to Chapter 1568 of the Statutes of 1982 (firefighters' cancer presumption).

(26) Two hundred sixty-two thousand dollars ($262,000) to pay for deficiencies in the 1996 Budget Act, for costs incurred pursuant to Chapter 921 of the Statutes of 1987 (countywide tax rates).

(27) Five thousand dollars ($5,000) to pay for deficiencies in the 1996 Budget Act, for costs incurred pursuant to Chapter 1242 of the Statutes of 1977 (senior citizens' property tax deferral).

(28) Three hundred sixty-three thousand dollars ($363,000) to pay for deficiencies in the 1996 and 1997 Budget Acts, for costs incurred pursuant to Chapter 486 of the Statutes of 1975 (test/reimbursement claims).

(29) One million four hundred seventeen thousand dollars ($1,417,000) to pay for deficiencies in the 1996 and 1997 Budget Acts, for costs incurred pursuant to Chapter 641 of the Statutes of 1986 (open meetings act notices).

(30) One hundred seventy-nine thousand dollars ($179,000) to pay for deficiencies in the 1995 claims bill (Chapter 914 of the Statutes of 1995) and the 1996 and 1997 Budget Acts, for costs incurred pursuant to Chapter 999 of the Statutes of 1991 (rape victim counseling center notices).

(31) Three million nine hundred seventy-four thousand dollars ($3,974,000) to pay for interest on the deficiencies as listed above in paragraphs (1) to (30), inclusive, incurred through June 30, 1998,

pursuant to Section 17561.6 of the Government Code (interest on late reimbursements).

(d) One thousand three hundred eighty-one dollars and three cents ($1,381.03) from the Tax Relief and Refund Account to the Executive Officer of the State Board of Control to expedite payment for claim number G329501.

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

In order to settle claims by school districts and local government agencies against the state for mandated costs associated with implementing designated provisions of law and to end hardship to those school districts and local government agencies, and to pay claims and resolve deficiencies in prior year appropriations, it is necessary that this act take effect immediately.

CHAPTER 781

An act to amend, repeal, and add Section 52 of the Metropolitan Water District Act (Chapter 209 of the Statutes of 1969), relating to metropolitan water districts.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. Section 52 of the Metropolitan Water District Act (Chapter 209 of the Statutes of 1969) is amended to read:

Sec. 52. (a) In addition to one representative, any member public agency may designate and appoint several representatives not exceeding one additional representative for each full 3 percent of the assessed valuation of property taxable for district purposes within the entire district that is within such member public agency, in which event all such representatives present at a meeting of the board of directors when a vote is taken shall cast, or may abstain from casting, an equal share of the total vote to which such member public agency is entitled.

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

SEC. 2. Section 52 is added to the Metropolitan Water District Act (Chapter 209 of the Statutes of 1969), to read:

Sec. 52. (a) In addition to one representative, any member public agency may designate and appoint several representatives not exceeding one additional representative for each full 5 percent of the

assessed valuation of property taxable for district purposes within the entire district that is within such member public agency, in which event all such representatives present at a meeting of the board of directors when a vote is taken shall cast, or may abstain from casting, an equal share of the total vote to which such member public agency is entitled.

(b) This section shall become operative on January 1, 2001.

CHAPTER 782

An act to add Section 14669.20 to the Government Code, relating to state property.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. Section 14669.20 is added to the Government Code, to read:

14669.20. (a) Subject to paragraphs (2) and (3) of subdivision (b), the director may purchase, exchange, or otherwise acquire real property and construct facilities, including any improvements, betterments, and related facilities, within the County of Sacramento or the City of West Sacramento pursuant to this section, for use by the Department of Corrections and other state agencies. The department may enter into a lease-purchase, or a lease with an option to purchase the facilities, or may contract for the 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 this section. The total authorized scope of the project shall not exceed 750,000 gross square feet of office facilities and the total authorized costs of the facilities, including land acquisition, preliminary plans, working drawings, construction, and other costs shall not exceed one hundred sixty million dollars ($160,000,000), excluding any additional sums necessary to pay interim and permanent financing costs. Notwithstanding Section 13332.11, the State Public Works Board may authorize the augmentation of the costs authorized in the annual Budget Act pursuant to this paragraph by up to 10 percent of the amount authorized. The department shall acquire the facility on a site that permits future expansion of the facility authorized by this section, if evaluations of future Department of Corrections' headquarters workload indicates that future expansion of the facility may be warranted.

(b) (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 Department of Corrections shall commit a sufficient amount of its support appropriation to repay any loans made for the project from the Pooled Money Investment Account. It is the intent of the Legislature that this commitment shall be included in future Budget Acts until all outstanding loans from the Pooled Money Investment Account are repaid either through the proceeds from the sale of bonds or from an appropriation.

(2) (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 (a) to design and build the facilities, 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 authorized in this section, 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.

(E) If the department proposes to acquire the facility pursuant to a lease-purchase agreement or a lease with an option to purchase, prior to executing an agreement to lease the facilities, the department shall submit to the Legislature a report that includes the site for the proposed facilities, the size of the facilities, the site characteristics, including, but not limited to, its proximity to public transit, the proposed lease terms, and any proposed terms concerning the exercise of any option to purchase the facilities.

(3) The department shall submit to the Legislature the information required to be submitted pursuant to paragraphs (2) and (5), notwithstanding Section 7550.5. Except for those contracts and agreements necessary to prepare the information required by paragraphs (2) and (5), the department shall not solicit bids to enter into any agreement to design and build or otherwise acquire the facilities, commence work on working drawings, or enter into an agreement to lease the facilities authorized in this section sooner than 120 days after the department submits to the Legislature the information required to be submitted pursuant to paragraphs (2) and (5). The Legislative Analyst shall evaluate the information submitted to the Legislature and shall prepare a report to the Joint Legislative Budget Committee within 60 days of receiving the documents submitted to the Legislature. It is the intent of the Legislature that the Joint Legislative Budget Committee meet prior to the date the department is authorized to solicit bids to design and build or otherwise acquire the facilities, commence work on working drawings, or enter into an agreement to lease the facilities 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 Legislative Budget Committee adopts a report prior to the date the department is authorized to solicit bids to design and build or otherwise acquire the facilities, commence work on working drawings, or enter into an agreement to lease the facilities, the department may solicit the bids, commence the work, or enter into an agreement to lease the facilities when the report is adopted by the Joint Legislative Budget Committee. The department shall submit periodic progress reports to the Joint Legislative Budget Committee while preparing the documents, including a draft of any request for proposals.

(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 land acquisition, 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) The net present value of the cost to acquire and operate the facilities authorized in this section 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). 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 the agencies will no longer occupy currently leased facilities when they occupy the proposed facilities.

(c) 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.

CHAPTER 783

An act to amend Section 110 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. Section 110 of the Revenue and Taxation Code is amended to read:

110. (a) Except as is otherwise provided in Section 110.1, "full cash value" or "fair market value" means the amount of cash or its equivalent that property would bring if exposed for sale in the open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other, and both the buyer and the seller have knowledge of all of the uses and purposes to which the property is adapted and for which it is capable of being used, and of the enforceable restrictions upon those uses and purposes.

(b) For purposes of determining the "full cash value" or "fair market value" of real property, other than possessory interests, being appraised upon a purchase, "full cash value" or "fair market value" is the purchase price paid in the transaction unless it is established by a preponderance of the evidence that the real property would not have transferred for that purchase price in an open market

transaction. The purchase price shall, however, be rebuttably presumed to be the "full cash value" or "fair market value" if the terms of the transaction were negotiated at arms length between a knowledgeable transferor and transferee neither of which could take advantage of the exigencies of the other. "Purchase price," as used in this section, means the total consideration provided by the purchaser or on the purchaser's behalf, valued in money, whether paid in money or otherwise. There is a rebuttable presumption that the value of improvements financed by the proceeds of an assessment resulting in a lien imposed on the property by a public entity is reflected in the total consideration, exclusive of that lien amount, involved in the transaction. This presumption may be overcome if the assessor establishes by a preponderance of the evidence that all or a portion of the value of those improvements is not reflected in that consideration. If a single transaction results in a change in ownership of more than one parcel of real property, the purchase price shall be allocated among those parcels and other assets, if any, transferred based on the relative fair market value of each.

(c) For real property, other than possessory interests, the change of ownership statement required pursuant to Section 480, 480.1, or 480.2, or the preliminary change of ownership statement required pursuant to Section 480.4, shall give any information as the board shall prescribe relative to whether the terms of the transaction were negotiated at "arms length." In the event that the transaction includes property other than real property, the change in ownership statement shall give information as the board shall prescribe disclosing the portion of the purchase price that is allocable to all elements of the transaction. If the taxpayer fails to provide the prescribed information, the rebuttable presumption provided by subdivision (b) shall not apply.

(d) Except as provided in subdivision (e), for purposes of determining the "full cash value" or "fair market value" of any taxable property, all of the following shall apply:

(1) The value of intangible assets and rights relating to the going concern value of a business using taxable property shall not enhance or be reflected in the value of the taxable property.

(2) If the principle of unit valuation is used to value properties that are operated as a unit and the unit includes intangible assets and rights, then the fair market value of the taxable property contained within the unit shall be determined by removing from the value of the unit the fair market value of the intangible assets and rights contained within the unit.

(3) The exclusive nature of a concession, franchise, or similar agreement, whether de jure or de facto, is an intangible asset that shall not enhance the value of taxable property, including real property.

(e) Taxable property may be assessed and valued by assuming the presence of intangible assets or rights necessary to put the taxable property to beneficial or productive use.

(f) For purposes of determining the "full cash value" or "fair market value" of real property, intangible attributes of real property shall be reflected in the value of the real property. These intangible attributes of real property include zoning, location, and other attributes that relate directly to the real property involved.

SEC. 2. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 784

An act to amend, repeal, and add Section 33128 of the Education Code, relating to school finance.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. Section 33128 of the Education Code is amended to read:

33128. (a) The standards and criteria to be adopted by the State Board of Education pursuant to Section 33127 shall include, but not be limited to, comparisons and reviews of the following:

(1) Average daily attendance.

(2) Revenues and expenditures.

(3) Reserves and fund balance.

(4) Multiyear commitments.

(b) Notwithstanding paragraph (3), the State Board of Education shall not adopt standards and criteria for a budget reserve for economic uncertainties in excess of 1 percent of a school district's total expenditures, transfers out, and other uses of the school district for a school district that has an average daily attendance greater than 125,000 and where the school district has, by an affirmative vote of its governing board, agreed to a budget reserve of 1 percent. For the purposes of this paragraph, "transfers out" and "other uses" of the school district shall have the same meaning as set forth in the California School Accounting Manual.

(c) This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 33128 is added to the Education Code, to read:

33128. (a) The standards and criteria to be adopted by the State Board of Education pursuant to Section 33127 shall include, but not be limited to, comparisons and reviews of the following:

(1) Average daily attendance.

(2) Revenues and expenditures.

(3) Reserves and fund balance.

(4) Multi-year commitments.

(b) This section shall become operative on July 1, 2003.

CHAPTER 785

An act to add Section 10609.5 to the Welfare and Institutions Code, relating to child welfare services.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) The safety of children is the paramount goal of the child welfare services system.

(b) The existing approach to budgeting and funding child welfare services was established over 15 years ago, and it is in the best interest of children for the Legislature to find out if the system is outdated and inappropriate as a means of adequately funding the program today.

(c) Numerous and significant changes in child welfare services policy and practice, as well as demographic and societal changes over the past 15 years, have dramatically affected the workload demands of the current system and its ability to deliver high quality child welfare services. Some of these changes include:

(1) An explosion in the number of children at risk of abuse, neglect, and exploitation due to substance abuse in families.

(2) An overall increase in the number and complexity of stresses on vulnerable families, and a corresponding rise in the level of dysfunction in the families and children in need of child welfare services.

(3) Over a decade of new state and federal laws and regulations that have impacted the workload demands of the system.

(4) The implementation of promising advances and innovation in child welfare services practice and delivery at the local level, such as family conferencing and wraparound services.

(5) The implementation of the child welfare services case management system.

(d) These changes and many others have contributed to a serious need for a reevaluation of California's methodology for budgeting and funding the child welfare services system.

SEC. 2. Section 10609.5 is added to the Welfare and Institutions Code, to read:

10609.5. (a) The department shall contract with an appropriate and qualified entity to conduct an evaluation of the adequacy of the current child welfare services budgeting methodology and make recommendations for revising the budgeting methodology, including appropriate caseload levels, supportive services, and preventative services, in order to accurately and adequately fund the system. This evaluation shall, at a minimum, consider the impact of the following factors on the budgeting methodology:

(1) The current state and federal statutory and regulatory environment for child welfare services.

(2) The state of the art advancements and best child welfare practice, such as family conferencing and wraparound services.

(3) The impact of the child welfare services case management system on the workload of workers in the system.

(4) The nature and degree of the problems experienced by families in need of child welfare services, and the service needs of abused and neglected children and their families.

(5) The impact on workload of obtaining timely medical, mental health, educational, and developmental assessments of children in the child welfare system, and coordinating with other systems to meet the children's needs.

(b) The department shall convene an advisory group that shall include representatives of the County Welfare Directors Association, the California State Association of Counties, child welfare services consumers, children's advocacy organizations, and child welfare social worker organizations. The advisory group shall do both of the following:

(1) Provide oversight over the process of selecting an entity to conduct an evaluation under subdivision (a).

(2) Provide oversight over, and technical assistance to, the entity selected to conduct the evaluation under subdivision (a).

(c) The department shall report the findings and recommendations of the evaluation to the appropriate policy and fiscal committees of the Legislature no later than January 30, 2000.

CHAPTER 786

An act to amend Section 3304 of the Government Code, relating to public safety officers.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

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

SECTION 1. Section 3304 of the Government Code is amended to read:

3304. (a) No public safety officer shall be subjected to punitive action, or denied promotion, or be threatened with any such treatment, because of the lawful exercise of the rights granted under this chapter, or the exercise of any rights under any existing administrative grievance procedure.

Nothing in this section shall preclude a head of an agency from ordering a public safety officer to cooperate with other agencies involved in criminal investigations. If an officer fails to comply with such an order, the agency may officially charge him or her with insubordination.

(b) No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency against any public safety officer who has successfully completed the probationary period that may be required by his or her employing agency without providing the public safety officer with an opportunity for administrative appeal.

(c) No chief of police may be removed by a public agency, or appointing authority, without providing the chief of police with written notice and the reason or reasons therefor and an opportunity for administrative appeal.

For purposes of this subdivision, the removal of a chief of police by a public agency or appointing authority, for the purpose of implementing the goals or policies, or both, of the public agency or appointing authority, for reasons including, but not limited to, incompatibility of management styles or as a result of a change in administration, shall be sufficient to constitute "reason or reasons."

Nothing in this subdivision shall be construed to create a property interest, where one does not exist by rule or law, in the job of Chief of Police.

(d) Except as provided in this subdivision and subdivision (g), no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct. This one-year limitation period shall apply only if the act, omission, or other misconduct occurred on or after January 1, 1998. In the event that the public agency determines that discipline may be taken, it shall complete its investigation and notify the public safety officer of its proposed disciplinary action within that year, except in any of the following circumstances:

(1) If the act, omission, or other allegation of misconduct is also the subject of a criminal investigation or criminal prosecution, the time

during which the criminal investigation or criminal prosecution is pending shall toll the one-year time period.

(2) If the public safety officer waives the one-year time period in writing, the time period shall be tolled for the period of time specified in the written waiver.

(3) If the investigation is a multijurisdictional investigation that requires a reasonable extension for coordination of the involved agencies.

(4) If the investigation involves more than one employee and requires a reasonable extension.

(5) If the investigation involves an employee who is incapacitated or otherwise unavailable.

(6) If the investigation involves a matter in civil litigation where the public safety officer is named as a party defendant, the one-year time period shall be tolled while that civil action is pending.

(7) If the investigation involves a matter in criminal litigation where the complainant is a criminal defendant, the one-year time period shall be tolled during the period of that defendant's criminal investigation and prosecution.

(8) If the investigation involves an allegation of workers' compensation fraud on the part of the public safety officer.

(e) Where a predisciplinary response or grievance procedure is required or utilized, the time for this response or procedure shall not be governed or limited by this chapter.

(f) If, after investigation and any predisciplinary response or procedure, the public agency decides to impose discipline, the public agency shall notify the public safety officer in writing of its decision to impose discipline, including the date that the discipline will be imposed, within 30 days of its decision, except if the public safety officer is unavailable for discipline.

(g) Notwithstanding the one-year time period specified in subdivision (c), an investigation may be reopened against a public safety officer if both of the following circumstances exist:

(1) Significant new evidence has been discovered that is likely to affect the outcome of the investigation.

(2) One of the following conditions exist:

(A) The evidence could not reasonably have been discovered in the normal course of investigation without resorting to extraordinary measures by the agency.

(B) The evidence resulted from the public safety officer's predisciplinary response or procedure.

(h) For those members listed in subdivision (a) of Section 830.2 of the Penal Code, the 30-day time period provided for in subdivision (e) shall not commence with the service of a preliminary notice of adverse action, should the public agency elect to provide the public safety officer with such a notice.

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 787

An act to add Section 1367.635 to the Health and Safety Code, and to add Section 10123.86 to the Insurance Code, relating to health coverage.

[Approved by Governor September 23, 1998. Filed with Secretary of State September 24, 1998.]

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

SECTION 1. This act shall be known and may be cited as the Breast Cancer Patient Protection Act of 1998.

SEC. 2. Section 1367.635 is added to the Health and Safety Code, to read:

1367.635. (a) Every health care service plan contract that is issued, amended, renewed, or delivered on or after January 1, 1999, that provides coverage for surgical procedures known as mastectomies and lymph node dissections, shall do all of the following:

(1) Allow the length of a hospital stay associated with those procedures to be determined by the attending physician and surgeon in consultation with the patient, consistent with sound clinical principles and processes. No health care service plan shall require a treating physician and surgeon to receive prior approval from the plan in determining the length of hospital stay following those procedures.

(2) Cover prosthetic devices or reconstructive surgery, including devices or surgery to restore and achieve symmetry for the patient incident to the mastectomy. Coverage for prosthetic devices and reconstructive surgery shall be subject to the deductible and coinsurance conditions applicable to other benefits.

(3) Cover all complications from a mastectomy, including lymphedema.

(b) As used in this section, all of the following definitions apply:

(1) "Coverage for prosthetic devices or reconstructive surgery" means any initial and subsequent reconstructive surgeries or prosthetic devices, and followup care deemed necessary by the attending physician and surgeon.

(2) "Prosthetic devices" means and includes the provision of initial and subsequent prosthetic devices pursuant to an order of the patient's physician and surgeon.

(3) "Mastectomy" shall have the same meaning as in Section 1367.6.

(4) "To restore and achieve symmetry" means that, in addition to coverage of prosthetic devices and reconstructive surgery for the diseased breast on which the mastectomy was performed, prosthetic devices and reconstructive surgery for a healthy breast is also covered if, in the opinion of the attending physician and surgeon, this surgery is necessary to achieve normal symmetrical appearance.

(c) No individual, other than a licensed physician and surgeon competent to evaluate the specific clinical issues involved in the care requested, may deny requests for authorization of health care services pursuant to this section.

(d) No health care service plan shall do any of the following in providing the coverage described in subdivision (a):

(1) Reduce or limit the reimbursement of the attending provider for providing care to an individual enrollee or subscriber in accordance with the coverage requirements.

(2) Provide monetary or other incentives to an attending provider to induce the provider to provide care to an individual enrollee or subscriber in a manner inconsistent with the coverage requirements.

(3) Provide monetary payments or rebates to an individual enrollee or subscriber to encourage acceptance of less than the coverage requirements.

(e) On or after July 1, 1999, every health care service plan shall include notice of the coverage required by this section in the plan's evidence of coverage.

(f) Nothing in this section shall be construed to limit retrospective utilization review and quality assurance activities by the plan.

SEC. 3. Section 10123.86 is added to the Insurance Code, to read:

10123.86. (a) Every policy of disability insurance covering hospital, surgical, or medical expenses that is issued, amended, renewed, or delivered on or after January 1, 1999, that provides coverage for surgical procedures known as mastectomies and lymph node dissections, shall do all of the following:

(1) Allow the length of a hospital stay associated with those procedures to be determined by the attending physician and surgeon in consultation with the patient, consistent with sound clinical principles and processes. No disability insurer shall require a treating physician and surgeon to receive prior approval in determining the length of hospital stay following those procedures.

(2) Cover prosthetic devices or reconstructive surgery, including devices or surgery to restore and achieve symmetry for the patient incident to the mastectomy. Coverage for prosthetic devices and reconstructive surgery shall be subject to the deductible and coinsurance conditions applicable to other benefits.

(3) Cover all complications from a mastectomy, including lymphedema.

(b) As used in this section, all of the following definitions apply:

(1) "Coverage for prosthetic devices or reconstructive surgery" means any initial and subsequent reconstructive surgeries or prosthetic devices, and followup care deemed necessary by the attending physician and surgeon.

(2) "Prosthetic devices" means and includes the provision of initial and subsequent prosthetic devices pursuant to an order of the patient's physician and surgeon.

(3) "Mastectomy" shall have the same meaning as in Section 10123.8.

(4) "To restore and achieve symmetry" means that, in addition to coverage of prosthetic devices and reconstructive surgery for the diseased breast on which the mastectomy was performed, prosthetic devices and reconstructive surgery for a healthy breast is also covered if, in the opinion of the attending physician and surgeon, this surgery is necessary to achieve normal symmetrical appearance.

(c) No individual, other than a licensed physician and surgeon competent to evaluate the specific clinical issues involved in the care requested, may deny requests for authorization of health care services pursuant to this section.

(d) No insurer shall do any of the following in providing the coverage described in subdivision (a):

(1) Reduce or limit the reimbursement of the attending provider for providing care to an insured in accordance with the coverage requirements.

(2) Provide monetary or other incentives to an attending provider to induce the provider to provide care to an insured in a manner inconsistent with the coverage requirements.

(3) Provide monetary payments or rebates to an insured to encourage acceptance of less than the coverage requirements.

(e) On or after July 1, 1999, every insurer shall include notice of the coverage required by this section in the insurer's evidence of coverage or certificate of insurance.

(f) Nothing in this section shall be construed to limit retrospective utilization review and quality assurance activities by the insurer.

(g) This section shall only apply to health benefit plans, as defined in subdivision (a) of Section 10198.6, except that for accident only, specified disease, or hospital indemnity insurance, coverage for benefits under this section shall apply to the extent that the benefits are covered under the general terms and conditions that apply to all other benefits under the policy. Nothing in this section shall be

construed as imposing a new benefit mandate on accident only, specified disease, or hospital indemnity insurance.

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 788

An act to add Section 1367.63 to the Health and Safety Code, to add Section 10123.88 to the Insurance Code, and to add Section 14132.62 to the Welfare and Institutions Code, relating to health care coverage.

[Approved by Governor September 23, 1998. Filed with Secretary of State September 24, 1998.]

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

SECTION 1. In enacting this act, it is the intent of the Legislature that health care service plans and disability insurers shall cover surgical procedures for enrollees and insureds if it is determined that the surgical procedures meet the definition of reconstructive surgery set forth in this act. However, in enacting subdivision (e) of Section 1367.63 of the Health and Safety Code, Section 10123.88 of the Insurance Code, and Section 14132.62 of the Welfare and Institutions Code, it is the intent of the Legislature that health care service plans and disability insurers shall not be required to cover a surgical procedure that will only result in a minimal improvement in the appearance of the patient. The determination of whether a surgery will produce only a minimal improvement shall be based upon the standard of care as practiced by physicians specializing in reconstructive surgery, and for services provided under the Medi-Cal program (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code), as specified in Section 14132.62 of the Welfare and Institutions Code.

SEC. 2. Section 1367.63 is added to the Health and Safety Code, to read:

1367.63. (a) Every health care service plan contract, except a specialized health care service plan contract, that is issued, amended, renewed, or delivered in this state on or after July 1, 1999, shall cover reconstructive surgery, as defined in subdivision (c), that is necessary to achieve the purposes specified in paragraphs (1) or (2) of subdivision (c). Nothing in this section shall be construed to require a plan to provide coverage for cosmetic surgery, as defined in subdivision (d).

(b) No individual, other than a licensed physician competent to evaluate the specific clinical issues involved in the care requested, may deny initial requests for authorization of coverage for treatment pursuant to this section. For a treatment authorization request submitted by a podiatrist or an oral and maxillofacial surgeon, the request may be reviewed by a similarly licensed individual, competent to evaluate the specific clinical issues involved in the care requested.

(c) "Reconstructive surgery" means surgery performed to correct or repair abnormal structures of the body caused by congenital defects, developmental abnormalities, trauma, infection, tumors, or disease to do either of the following:

(1) To improve function.

(2) To create a normal appearance, to the extent possible.

(d) "Cosmetic surgery" means surgery that is performed to alter or reshape normal structures of the body in order to improve appearance.

(e) In interpreting the definition of reconstructive surgery, a health care service plan may utilize prior authorization and utilization review that may include, but need not be limited to, any of the following:

(1) Denial of the proposed surgery if there is another more appropriate surgical procedure that will be approved for the enrollee.

(2) Denial of the proposed surgery or surgeries if the procedure or procedures, in accordance with the standard of care as practiced by physicians specializing in reconstructive surgery, offer only a minimal improvement in the appearance of the enrollee.

(3) Denial of payment for procedures performed without prior authorization.

(4) For services provided under the Medi-Cal program (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code), denial of the proposed surgery if the procedure offers only a minimal improvement in the appearance of the enrollee, as may be defined in any regulations that may be promulgated by the State Department of Health Services.

SEC. 3. Section 10123.88 is added to the Insurance Code, to read:

10123.88. (a) Every policy of disability insurance covering hospital, medical, or surgical expenses that is issued, amended, renewed, or delivered in this state on or after July 1, 1999, shall cover

reconstructive surgery, as defined in subdivision (c), that is necessary to achieve the purposes specified in paragraphs (1) or (2) of subdivision (c). Nothing in this section shall be construed to require a policy to provide coverage for cosmetic surgery, as defined in subdivision (d). This section shall only apply to health benefit plans, as defined in subdivision (a) of Section 10198.6, except that for accident only, specified disease, or hospital indemnity insurance, coverage for benefits under this section shall apply to the extent that the benefits are covered under the general terms and conditions that apply to all other benefits under the policy. Nothing in this section shall be construed as imposing a new benefit mandate on accident only, specified disease, or hospital indemnity insurance.

(b) No individual, other than a licensed physician competent to evaluate the specific clinical issues involved in the care requested, may deny initial requests for authorization of coverage for treatment pursuant to this section. For a treatment authorization request submitted by a podiatrist or an oral and maxillofacial surgeon, the request may be reviewed by a similarly licensed individual, competent to evaluate the specific clinical issues involved in the care requested.

(c) "Reconstructive surgery" means surgery performed to correct or repair abnormal structures of the body caused by congenital defects, developmental abnormalities, trauma, infection, tumors, or disease to do either of the following:

(1) To improve function.

(2) To create a normal appearance, to the extent possible.

(d) Nothing in this section shall be construed to require an insurer to provide coverage for cosmetic surgery. "Cosmetic surgery" means surgery that is performed to alter or reshape normal structures of the body in order to improve the patient's appearance.

(e) In interpreting the definition of reconstructive surgery, an insurer may utilize prior authorization and utilization review that may include, but need not be limited to, any of the following:

(1) Denial of the proposed surgery if there is another more appropriate surgical procedure that will be approved for the enrollee.

(2) Denial of the proposed surgery or surgeries if the procedure or procedures, in accordance with the standard of care as practiced by physicians specializing in reconstructive surgery, offer only a minimal improvement in the appearance of the enrollee.

(3) Denial of payment for procedures performed without prior authorization.

SEC. 4. Section 14132.62 is added to the Welfare and Institutions Code, to read:

14132.62. (a) Reconstructive surgery shall be covered under this chapter, as defined in subdivision (c), when necessary to achieve the purposes specified in paragraphs (1) or (2) of subdivision (c).

Nothing in this section shall be construed to require coverage for cosmetic surgery, as defined in subdivision (d).

(b) No individual, other than a licensed physician competent to evaluate the specific clinical issues involved in the care requested, may deny initial requests for authorization of coverage for treatment pursuant to this section. For a treatment authorization request submitted by a podiatrist or an oral and maxillofacial surgeon, the request may be reviewed by a similarly licensed individual competent to evaluate the specific clinical issues involved in the care requested.

(c) "Reconstructive surgery" means surgery performed on abnormal structures of the body caused by congenital defects, developmental abnormalities, trauma, infection, tumors, or disease to do either of the following:

(1) To improve function.

(2) To create a normal appearance, to the extent possible.

(d) "Cosmetic surgery" means surgery that is performed to alter or reshape normal structures of the body in order to improve appearance.

(e) In connection with the interpretation of the definition of reconstructive surgery, a proposed surgical procedure may be subject to prior authorization and utilization review that may include, but need not be limited to, denial under any of the following circumstances:

(1) There is another more appropriate surgical procedure that will be approved for the enrollee.

(2) The procedure or procedures offer only a minimal improvement in the appearance of the enrollee, as defined in regulations adopted by the department.

(3) Denial of payment for procedures performed without prior authorization.

(f) This section shall become operative July 1, 1999.

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 789

An act to add Section 11159.2 to the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 23, 1998. Filed with Secretary of State September 24, 1998.]

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

SECTION 1. (a) The Legislature finds and declares the following:

(1) Although most, if not all, cancer pain can be relieved, a significant number of cancer patients with pain are inadequately treated, and some cancer patients die with severe, unrelieved pain.

(2) The mainstay of cancer pain management is opioid therapy, which therapy utilizes controlled substances classified in Schedule II.

(3) A prescription form for a Schedule II controlled substance is required to be prepared in triplicate, and the original is required to be sent to the Department of Justice.

(4) The Appropriate Prescribing Task Force of the Medical Board of California has recognized that pain is undertreated in California in part due to physicians' concern about undergoing investigation for overprescribing.

(5) Forty-five states in the nation have no requirement for triplicate prescriptions.

(6) Schedule II controlled substances would be prescribed more for the treatment of pain if prescription forms were not required to be sent to the Department of Justice.

(b) It is the intent of the Legislature, by the enactment of this act, to reduce the undertreatment of pain with the appropriate and legal prescribing of Schedule II controlled substances for terminally ill patients in order to relieve their pain and suffering.

(c) It is the intent of the Legislature that any state agency or board that adopts regulations pursuant to this act shall, prior to any adoption of regulations, review the report of the Controlled Substances Utilization Review and Evaluation Systems (CURES) Project required under Section 11165 of the Health and Safety Code and consider the data contained in the report.

(d) It is the intent of the Legislature that if state law requiring official prescription blanks for Schedule II medications is repealed in its entirety, then the requirements of this chapter would be unnecessary and should be repealed.

SEC. 2. Section 11159.2 is added to the Health and Safety Code, to read:

11159.2. (a) Notwithstanding any other provision of law, a prescription for a Schedule II controlled substance for use by a patient who has a terminal illness shall not be subject to Section 11164.

(b) (1) The prescription shall be signed and dated by the prescriber and shall contain the name of the person for whom the controlled substance is prescribed, the name and quantity of the controlled substance prescribed, and directions for use. The signature, date, and information required by this paragraph shall be wholly written in ink or indelible pencil in the handwriting of the prescriber.

(2) The prescription shall also contain the address of the person for whom the controlled substance is prescribed, as provided in paragraph (3) of subdivision (b) of Section 11164, and shall contain the name, address, telephone number, category of professional licensure, and federal controlled substance registration number of the prescriber, as provided in paragraph (2) of subdivision (b) of Section 11164.

(3) The prescription shall also indicate that the prescriber has certified that the patient is terminally ill by the words "11159.2 exemption."

(c) A pharmacist may fill a prescription pursuant to this section when there is a technical error in the certification required by paragraph (3) of subdivision (b), provided that he or she has personal knowledge of the patient's terminal illness, and subsequently returns the prescription to the prescriber for correction within 72 hours.

(d) For purposes of this section, "terminally ill" means a patient who meets all of the following conditions:

(1) In the reasonable medical judgment of the prescribing physician, the patient has been determined to be suffering from an illness that is incurable and irreversible.

(2) In the reasonable medical judgment of the prescribing physician, the patient's illness will, if the illness takes its normal course, bring about the death of the patient within a period of one year.

(3) The patient's treatment by the physician prescribing a Schedule II controlled substance pursuant to this section primarily is for the control of pain, symptom management, or both, rather than for cure of the illness.

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 790

An act to add Section 1367.71 to the Health and Safety Code, and to add Section 10119.9 to the Insurance Code, relating to health coverage.

[Approved by Governor September 23, 1998. Filed with Secretary of State September 24, 1998.]

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

SECTION 1. Section 1367.71 is added to the Health and Safety Code, to read:

1367.71. (a) Every health care service plan contract, other than a specialized health care service plan contract, that is issued, amended, renewed, or delivered on or after January 1, 2000, shall be deemed to cover general anesthesia and associated facility charges for dental procedures rendered in a hospital or surgery center setting, when the clinical status or underlying medical condition of the patient requires dental procedures that ordinarily would not require general anesthesia to be rendered in a hospital or surgery center setting. The health care service plan may require prior authorization of general anesthesia and associated charges required for dental care procedures in the same manner that prior authorization is required for other covered diseases or conditions.

(b) This section shall apply only to general anesthesia and associated facility charges for only the following enrollees, and only if the enrollees meet the criteria in subdivision (a):

(1) Enrollees who are under seven years of age.

(2) Enrollees who are developmentally disabled, regardless of age.

(3) Enrollees whose health is compromised and for whom general anesthesia is medically necessary, regardless of age.

(c) Nothing in this section shall require the health care service plan to cover any charges for the dental procedure itself, including, but not limited to, the professional fee of the dentist. Coverage for anesthesia and associated facility charges pursuant to this section shall be subject to all other terms and conditions of the plan that apply generally to other benefits.

(d) Nothing in this section shall be construed to allow a health care service plan to deny coverage for basic health care services, as defined in Section 1345.

(e) A health care service plan may include coverage specified in subdivision (a) at any time prior to January 1, 2000.

SEC. 2. Section 10119.9 is added to the Insurance Code, to read:

10119.9. (a) A disability insurance policy or certificate covering hospital, surgical, or medical expenses, that meets the definition of "health benefit plan" in subdivision (a) of Section 10198.6, that is issued, amended, renewed, or delivered on or after January 1, 2000, shall be deemed to cover general anesthesia and associated facility charges for dental procedures rendered in a hospital or surgery center setting, when the clinical status or underlying medical condition of the insured requires dental procedures that ordinarily would not require general anesthesia to be rendered in a hospital or surgery center setting. The disability insurance policy or certificate may require prior authorization of general anesthesia and associated charges required for dental care procedures in the same manner that prior authorization is required for other covered diseases or conditions.

(b) This section shall apply only to general anesthesia and associated facility charges for only the following insureds, and only if the insureds meet the criteria in subdivision (a):

(1) Insureds who are under seven years of age.

(2) Insureds who are developmentally disabled, regardless of age.

(3) Insureds whose health is compromised and for whom general anesthesia is medically necessary, regardless of age.

(c) Nothing in this section shall require insurers to cover any charges for the dental procedure itself, including the professional fee of the dentist. Coverage for anesthesia and associated facility charges pursuant to this section shall be subject to all other terms and conditions of the policy or certificate that apply generally to other benefits.

(d) Nothing in this section shall require insurers to cover anesthesia or related facility charges for dental procedures that ordinarily would require general anesthesia and that do not meet the requirements of subdivision (a), (b), or (c).

(e) A disability insurance policy may include coverage specified in subdivision (a) at any time prior to January 1, 2000.

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 791

An act to amend Sections 2191 and 2811.5 of, and to add Section 2196.2 to, the Business and Professions Code, relating to pain management.

[Approved by Governor September 23, 1998. Filed with Secretary of State September 24, 1998.]

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

SECTION 1. Section 2191 of the Business and Professions Code is amended to read:

2191. (a) In determining its continuing education requirements, the Division of Licensing shall consider including a course in human sexuality as defined in Section 2090 and nutrition to be taken by those licensees whose practices may require knowledge in those areas.

(b) The division shall consider including a course in child abuse detection and treatment to be taken by those licensees whose practices are of a nature that there is a likelihood of contact with abused or neglected children.

(c) The division shall consider including a course in acupuncture to be taken by those licensees whose practices may require knowledge in the area of acupuncture and whose education has not included instruction in acupuncture.

(d) The division shall encourage every physician and surgeon to take nutrition as part of his or her continuing education, particularly a physician and surgeon involved in primary care.

(e) The division shall consider including a course in elder abuse detection and treatment to be taken by those licensees whose practices are of a nature that there is a likelihood of contact with abused or neglected persons 65 years of age and older.

(f) In determining its continuing education requirements, the division shall consider including a course in the early detection and treatment of substance abusing pregnant women to be taken by those licensees whose practices are of a nature that there is a likelihood of contact with these women.

(g) In determining its continuing education requirements, the division shall consider including a course in the special care needs of drug addicted infants to be taken by those licensees whose practices are of a nature that there is a likelihood of contact with these infants.

(h) In determining its continuing education requirements, the division shall consider including a course providing training and guidelines on how to routinely screen for signs exhibited by abused women, particularly for physicians and surgeons in emergency, surgical, primary care, pediatric, prenatal, and mental health settings. In the event the division establishes a requirement for continuing education coursework in spousal or partner abuse

detection or treatment, that requirement shall be met by each licensee within no more than four years from the date the requirement is imposed.

(i) In determining its continuing education requirements, the division shall consider including a course in the special care needs of individuals and their families facing end-of-life issues, including, but not limited to, all of the following:

(1) Pain and symptom management.

(2) The psycho-social dynamics of death.

(3) Dying and bereavement.

(4) Hospice care.

(j) In determining its continuation education requirements, the division shall give its highest priority to considering a course on pain management.

SEC. 2. Section 2196.2 is added to the Business and Professions Code, to read:

2196.2. The board shall periodically develop and disseminate information and educational material regarding pain management techniques and procedures to each licensed physician and surgeon and to each general acute care hospital in this state. The board shall consult with the State Department of Health Services in developing the materials to be distributed pursuant to this section.

SEC. 3. Section 2811.5 of the Business and Professions Code is amended to read:

2811.5. (a) Each person renewing his or her license under Section 2811 shall submit proof satisfactory to the board that, during the preceding two-year period, he or she has been informed of the developments in the registered nurse field or in any special area of practice engaged in by the licensee, occurring since the last renewal thereof, either by pursuing a course or courses of continuing education in the registered nurse field or relevant to the practice of the licensee, and approved by the board, or by other means deemed equivalent by the board.

(b) For purposes of this section, the board shall, by regulation, establish standards for continuing education. The standards shall be established in a manner to assure that a variety of alternative forms of continuing education are available to licensees, including, but not limited to, academic studies, in-service education, institutes, seminars, lectures, conferences, workshops, extension studies, and home study programs. The standards shall take cognizance of specialized areas of practice. The continuing education standards established by the board shall not exceed 30 hours of direct participation in a course or courses approved by the board, or its equivalent in the units of measure adopted by the board.

(c) The board shall encourage continuing education in spousal or partner abuse detection and treatment. In the event the board establishes a requirement for continuing education coursework in spousal or partner abuse detection or treatment, that requirement

shall be met by each licensee within no more than four years from the date the requirement is imposed.

(d) In establishing standards for continuing education, the board shall consider including a course in the special care needs of individuals and their families facing end-of-life issues, including, but not limited to, all of the following:

(1) Pain and symptom management.

(2) The psycho-social dynamics of death.

(3) Dying and bereavement.

(4) Hospice care.

(e) In establishing standards for continuing education, the board may include a course on pain management.

(f) This section shall not apply to licensees during the first two years immediately following their initial licensure in California or any other governmental jurisdiction.

(g) The board may, in accordance with the intent of this section, make exceptions from continuing education requirements for licensees residing in another state or country, or for reasons of health, military service, or other good cause.

CHAPTER 792

An act to amend Sections 17072 and 17140 of, and to add Section 17204 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 23, 1998. Filed with Secretary of State September 24, 1998.]

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

SECTION 1. This act shall be known and may be cited as the Higher Education Affordability Act.

SEC. 2. Section 17072 of the Revenue and Taxation Code is amended to read:

17072. (a) Section 62 of the Internal Revenue Code, relating to adjusted gross income defined, shall apply, except as otherwise provided.

(b) The amendments to Section 62 of the Internal Revenue Code, made by Section 13213 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to modifications to deduction for moving expenses, shall apply to taxable years beginning on or after January 1, 1996.

(c) The deduction allowed by Section 17204, relating to interest on education loans, shall be allowed in computing adjusted gross income.

SEC. 3. Section 17140 of the Revenue and Taxation Code is amended to read:

17140. (a) For purposes of this section, the following terms have the following meanings as provided in the Golden State Scholarshare Trust Act (Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of the Education Code):

(1) "Beneficiary" has the meaning set forth in subdivision (c) of Section 69980 of the Education Code.

(2) "Benefit" has the meaning set forth in subdivision (d) of Section 69980 of the Education Code.

(3) "Participant" has the meaning set forth in subdivision (h) of Section 69980 of the Education Code.

(4) "Participation agreement" has the meaning set forth in subdivision (i) of Section 69980 of the Education Code.

(5) "Scholarshare trust" has the meaning set forth in subdivision (f) of Section 69980 of the Education Code.

(b) Except as otherwise provided in subdivision (c), gross income of a beneficiary or a participant does not include any of the following:

(1) Any distribution or earnings under a Scholarshare trust participation agreement, as provided in Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of the Education Code.

(2) Any contribution to the Scholarshare trust on behalf of a beneficiary shall not be includable as gross income of that beneficiary.

(c) (1) Any distribution under a Scholarshare trust participation agreement shall be includable in the gross income of the distributee in the manner as provided under Section 72 of the Internal Revenue Code, as modified by Section 17085, to the extent not excluded from gross income under this part. For purposes of applying Section 72 of the Internal Revenue Code, the following apply:

(A) All Scholarshare trust accounts of which an individual is a beneficiary shall be treated as one account, except as otherwise provided.

(B) All distributions during a taxable year shall be treated as one distribution.

(C) The value of the participation agreement, income on the participation agreement, and investment in the participation agreement shall be computed as of the close of the calendar year in which the taxable year begins.

(2) A contribution by a for-profit or nonprofit entity for the benefit of an owner or employee of that entity or a beneficiary whom the owner or employee has the power to designate, including the owner or employee's minor children, shall be included in the gross income of that owner or employee in the year the contribution is made.

(3) For purposes of this subdivision, "distribution" includes any benefit furnished to a beneficiary under a participation agreement,

as provided in Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of the Education Code.

(4) (A) Paragraph (1) shall not apply to that portion of any distribution that, within 60 days of distribution, is transferred to the credit of another beneficiary under the Scholarshare trust who is a "member of the family," as that term is used in Section 529(e)(2) of the Internal Revenue Code, as amended by Section 211 of the Taxpayer Relief Act of 1997 (P.L. 105-34), of the former beneficiary of that Scholarshare trust.

(B) Any change in the beneficiary of an interest in the Scholarshare trust shall not be treated as a distribution for purposes of paragraph (1) if the new beneficiary is a "member of the family," as that term is used in Section 529(e)(2) of the Internal Revenue Code, as amended by Section 211 of the Taxpayer Relief Act of 1997 (P.L. 105-34), of the former beneficiary of that Scholarshare trust.

(d) For purposes of determining adjusted gross income, Section 62(a)(9) of the Internal Revenue Code shall not apply to any amount forfeited upon distribution of an account created pursuant to a participation agreement.

(e) The amendments made to the Internal Revenue Code by Section 211 of the Taxpayer Relief Act of 1997 (P.L. 105-34) shall apply to taxable years beginning on or after January 1, 1998.

SEC. 4. Section 17204 is added to the Revenue and Taxation Code, to read:

17204. Section 221 of the Internal Revenue Code, as added by Section 202 of the Taxpayer Relief Act of 1997 (P.L. 105-34), relating to interest on education loans, shall apply for any taxable year beginning on or after January 1, 1998.

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 793

An act to amend Sections 52240, 52241, and 52243 of, and to add and repeal Section 52244 of, the Education Code, relating to pupil instruction, and making an appropriation therefor.

[Approved by Governor September 23, 1998. Filed with Secretary of State September 24, 1998.]

On this date I have signed Assembly Bill No. 2216.

This bill would provide grants to school districts for fee assistance to economically disadvantaged students taking advanced placement examinations. However, I am reducing the appropriation from $2.5 million to $1.5 million to better reflect the expected demand for assistance. This level of funding will provide state subsidies for 37,500 economically disadvantaged students. Although enrollment of economically disadvantage students in advanced placement courses will continue to grow over time,

$1.5 million will fully fund this program for 1998–99.

SEC. 5. (a) The sum of one million five hundred thousand dollars ($1,500,000) is hereby appropriated from the General Fund to the State Department of Education for purposes of Section 52244 of the Education Code.

(b) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by subdivision (a) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 1998–99 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 1998–99 fiscal year.

PETE WILSON, Governor

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

SECTION 1. Section 52240 of the Education Code is amended to read:

52240. (a) The Legislature hereby finds and declares all of the following:

(1) Advanced placement courses, for which school credit is awarded, provide rigorous academic coursework opportunities for high school pupils and help to improve the overall curriculum at schools where they are provided.

(2) The successful completion of advanced placement courses and subsequent advanced placement examinations, which are conducted by the College Entrance Examination Board and for which college credit is awarded, provide a cost-effective means for high school pupils to obtain college-level coursework experience.

(3) To the extent that economically disadvantaged pupils are provided financial assistance to take advanced placement examinations, they will be provided with successful college-level experience and be encouraged to pursue postsecondary education opportunities.

(b) It is the intent of the Legislature, therefore, that certain state funding that currently is provided to school districts be made available to provide financial assistance to economically disadvantaged pupils in the payment of advanced placement examination fees. It is further the intent of the Legislature that a competitive grant program also be established for the purpose of awarding grants to economically disadvantaged pupils to cover the costs of advanced placement examination fees, thereby creating a second source of financial assistance for economically disadvantaged pupils taking advanced placement examinations.

SEC. 2. Section 52241 of the Education Code is amended to read:

52241. For purposes of this chapter, the following terms have the following meanings:

(a) "Advanced placement examinations" means the advanced placement examinations conducted by the College Entrance

Examination Board, on the basis of which participating institutions of postsecondary education award postsecondary academic credit.

(b) "Economically disadvantaged pupil" means a high school pupil who is any one of the following:

(1) A pupil who comes from a low-income household. As used in this chapter, "low-income" refers to a household the taxable income of which for the preceding tax year did not exceed 200 percent of an amount equal to the poverty level determined by using the criteria of poverty established by the Census Bureau of the United States Department of Commerce. Documentation of a pupil's low-income status for the purposes of this subdivision shall be made in accordance with the following:

(A) In the case of a pupil who is 17 years of age or younger or who is a dependent within the meaning of the federal Internal Revenue Code, a signed financial need statement shall be submitted by the pupil's parent or legal guardian, along with verification of this financial need from another governmental entity or a photocopy of the most recent federal income tax return filed by the pupil's parent or legal guardian.

(B) In the case of a pupil who is 18 years of age or older or who is not a dependent within the meaning of the federal Internal Revenue Code, a signed financial need statement shall be submitted by the pupil, along with verification of this financial need from another governmental entity or a photocopy of the most recent federal income tax return filed by the pupil.

(2) A pupil who is eligible for federal free or reduced meal programs.

(3) A pupil who attends a school where at least 75 percent of all pupils enrolled are eligible for federal free or reduced meal programs.

SEC. 3. Section 52243 of the Education Code is amended to read:

52243. No later than January 1, 2004, the Superintendent of Public Instruction shall submit a report to the Legislature describing the effectiveness of the pilot grant program established pursuant to Section 52244. The report shall include specific recommendations to continue, discontinue, modify, or expand the program. The report shall include information on at least all of the following:

(a) The total number of pupils participating in advanced placement examinations, separately identifying the number of economically disadvantaged pupils, and any increases in those numbers as a result of the funding made available pursuant to Section 52244.

(b) The performance and pass rates on advanced placement examinations on the part of economically disadvantaged pupils, including any increase in those rates.

(c) The number of pupils receiving financial assistance pursuant to Section 52244 for advanced placement examination fees.

(d) The number of economically disadvantaged pupils in advance placement programs who enroll in higher education institutions, separated by institutional segment.

(e) The number of economically disadvantaged pupils who have passed an advanced placement examination with a score of 3 or better in any subject and have taken an advanced placement course in that subject.

SEC. 4. Section 52244 is added to the Education Code, to read:

52244. (a) There is hereby established a pilot grant program for the purpose of awarding grants to cover the costs of advanced placement examination fees. The State Department of Education shall administer this program.

(b) Any school district may apply to the State Department of Education for grant funding pursuant to this section, based on the number of economically disadvantaged pupils in the district enrolled in advanced placement courses who will take the next offered advanced placement examinations. A school district that applies to the State Department of Education for this purpose shall designate school district staff to whom pupils may submit applications for grants and shall institute a plan to notify pupils of the availability of financial assistance pursuant to this section. Grants shall be expended only to pay the fees required of pupils to take an advanced placement examination.

(c) Any economically disadvantaged pupil who is enrolled in an advanced placement course may apply to the designated school district staff for a grant pursuant to this section. A pupil who receives a grant shall pay five dollars ($5) of the examination fee.

(d) School districts and county superintendents of schools may join together and form collaboratives or consortia in order to participate in the grant program established by this section.

(e) Grants provided pursuant to this section shall not be used to supplant fee waivers available to low-income pupils who take advanced placement examinations.

(f) If the total school district applications exceed the total funds available pursuant to this section, the State Department of Education shall prorate the grants based upon the ratio of the total amount requested to the total amount budgeted by the state for this purpose.

(g) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statue, that is enacted before January 1, 2005, deletes or extends that date.

SEC. 5. (a) The sum of two million five hundred thousand dollars ($2,500,000) is hereby appropriated from the General Fund to the State Department of Education for purposes of Section 52244 of the Education Code.

(b) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by subdivision (a) shall be deemed to be "General Fund revenues appropriated for school districts," as

defined in subdivision (c) of Section 41202 of the Education Code, for the 1998–99 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 1998–99 fiscal year.

CHAPTER 794

An act to add Chapter 12.5 (commencing with Section 52920) to Part 28 of the Education Code, relating to education, and making an appropriation therefor.

[Approved by Governor September 23, 1998. Filed with Secretary of State September 24, 1998.]

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

SECTION 1. Chapter 12.5 (commencing with Section 52920) is added to Part 28 of the Education Code, to read:

CHAPTER 12.5. INTERNATIONAL BACCALAUREATE DIPLOMA PROGRAM

52920. (a) The Legislature hereby finds and declares that the International Baccalaureate Diploma Program is a comprehensive and rigorous two-year curriculum, leading to examinations for high school pupils. Its objectives are to provide pupils with a balanced education, to facilitate geographic and cultural mobility, and to promote international understanding through a shared academic experience. Successful International Baccalaureate Diploma candidates pursue a specific, intensive, balanced liberal arts course of study and must pass rigorous examinations in seven curricula areas. Successful International Baccalaureate Diploma candidates are typically granted substantial advanced placement credit at the finest colleges and universities in the nation. The academic content and rigor of the instruction and examinations in International Baccalaureate Diploma Programs is governed and continuously monitored by the International Baccalaureate Organization in Geneva, Switzerland.

(b) It is the intent of the Legislature to establish a system of appropriate incentives to encourage high schools to offer the intensive, rigorous course of instruction leading to International Baccalaureate Diplomas and to encourage pupils in these schools to enroll in, attempt, and pass the rigorous International Baccalaureate Diploma course of study and the rigorous examinations leading to the International Baccalaureate Diploma.

52921. School districts that operate an International Baccalaureate Diploma Program shall submit by October 1 of each school year the following information to the State Department of Education:

(a) The number of pupils enrolled in courses leading to an International Baccalaureate Diploma in each school district.

(b) The number of teachers in each school district attending training programs offered by the International Baccalaureate North America, Inc.

(c) The number of teachers in each school district participating in pre-International Baccalaureate support programs for the International Baccalaureate Diploma Program.

(d) The amount of money spent by the school district to provide or participate in the programs specified in subdivisions (a) to (c), inclusive.

52922. (a) From funds appropriated for the purpose of this chapter, the Superintendent of Public Instruction shall annually allocate to each school district, on behalf of each public high school within the district that offers an International Baccalaureate Diploma Program, the amount of up to twenty-five thousand dollars ($25,000) for each participating high school to cover the ongoing costs of professional development required by the program.

(b) From funds appropriated for the purpose of this chapter, the Superintendent of Public Instruction shall allocate the amount of up to fifteen thousand dollars ($15,000) to each school that is awarded a grant by the Superintendent of Public Instruction to start up an International Baccalaureate Diploma Program. The Superintendent of Public Instruction shall not award any grants that exceed the funding made available for that fiscal year for the purpose of startup grants. In awarding grants, the Superintendent of Public Instruction shall give priority to those schools that have the highest percentage of pupils from low-income families and to those schools that have been awarded affiliate status from the International Baccalaureate Organization.

(c) The total amount allocated pursuant to subdivisions (a) and (b) shall not exceed the total amount of the funds appropriated for those purposes in the annual Budget Act or any other statute.

SEC. 2. The sum of one million fifty thousand dollars ($1,050,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for allocation to school districts for the purposes set forth in Section 52922 of the Education Code.

SEC. 3. For the purpose of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by Section 2 of this act shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 1998–99 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 1998–99 fiscal year.

CHAPTER 795

An act to add and repeal Chapter 8 (commencing with Section 60830) of Part 33 of the Education Code, relating to the College Preparation Partnership Program, and making an appropriation therefor.

[Approved by Governor September 23, 1998. Filed with Secretary of State September 24, 1998.]

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

SECTION 1. Chapter 8 (commencing with Section 60830) is added to Part 33 of the Education Code, to read:

CHAPTER 8. COLLEGE PREPARATION PARTNERSHIP PROGRAM

60830. A grant program is hereby established whereby state matching funds shall be directed to school districts through a grant program administered by the State Department of Education. The state matching funds shall be allocated to public high school sites to operate preparation courses for college admissions tests. School districts and county superintendents of schools are authorized to collaborate or form consortia in order to participate in the program established by this chapter.

60830.3. (a) The schoolsites at which college admissions test preparation courses are provided under this chapter shall be identified and funded through a competitive process administered by the State Department of Education. Priority in this competitive process shall be granted to schoolsites with low college attendance rates, high numbers of low-income pupils, and demonstrated school-based efforts to improve the schoolsite's college preparatory curriculum and college attendance rates. Grants may also be awarded to any high school site to provide assistance to low-income pupils at that site with preparation for college admissions examinations.

(b) Funds allocated under this chapter shall be used to supplement, and not supplant, other federal, state, local, or private funds available to assist low-income individuals in paying for preparation courses for college admissions tests.

60830.5. Funds allocated under this chapter shall be earmarked for college admissions test preparation courses that may include financial assistance with test fees for high school pupils who are

expected to complete coursework required for admission to California State University or University of California and whose grade point average or other academic achievements indicate that the pupil will have the academic skills needed to complete the coursework.

60830.7. (a) (1) Funds allocated to schoolsites under this chapter shall be used by the schoolsites to provide a program for college entrance examination preparation or to enter into contracts with providers of college admissions test preparation courses, who may include, but are not necessarily limited to, private providers, public or private postsecondary institutions, or employees of the school district.

(2) The content of the college admissions test preparation course instruction provided under this chapter shall be determined by the school district of the schoolsite at which it occurs. This instruction shall, as a minimum, cover the format and the subject area content. The instruction shall also include practice tests, and the calculation of the scores of the pupils taking these practice tests, for the college admissions test to be covered. Pupil attendance at this instruction shall be monitored.

(3) The preparation course shall include at least 20 hours of direct pupil instruction, outside of the normal school curriculum, that may include instruction provided through satellite networking or any other real time interactive technology. To determine the effectiveness of the test preparation course, the preparation course shall include a pre- and post-practice examination. The pre- and post-practice examination scores shall be included in the evaluation of effectiveness submitted to the State Department of Education pursuant to subdivision (c). Each grant recipient shall report, by school or location and number of pupils, on the total costs and improvement of test results per participating pupil and for the schoolsite or location as a whole. This cost/benefit information index, along with a brief description of the program, shall be made widely available to other funded programs and, where possible, posted on a statewide website.

(4) Preparation courses shall be offered at intervals designed to conclude at those times that reasonably coincide with admissions testing dates.

(b) Every two dollars ($2) of grant funds allocated to a schoolsite under this chapter shall be matched by one dollar ($1) of funding raised by the schoolsite or the school district of which it is a part from federal, local, private, or other state sources. A schoolsite may assess students who participate in the program established by this chapter a fee not to exceed five dollars ($5) and may use the funds collected for purposes of this matching fund requirement. Funds may be awarded in an amount not to exceed the lesser of either seventy-five dollars ($75) per 10th grade pupil at the schoolsite receiving a grant, or two hundred dollars ($200) per pupil participating in the

examination preparation course and taking a college entrance examination.

(c) The State Department of Education shall recommend, and the State Board of Education shall approve, an evaluation design for the program established by this chapter. School districts that receive grants under this chapter shall use the evaluation design to assess the overall program and cost-effectiveness of their programs, including, but not necessarily limited to, the effect of this program on the college admissions test scores, the change in the total number of pupils who take the college admissions tests, and college attendance rates of program participants. These school districts shall submit their assessments to the State Department of Education in a timely manner. The State Department of Education shall develop a report including, but not necessarily limited to, the information received from school districts under this subdivision and recommendations to continue, modify, or discontinue the program established by this chapter. The report shall be approved by the State Board of Education and submitted to the Legislature on or before January 1, 2004.

60830.9. This chapter 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. (a) The sum of ten million dollars ($10,000,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for allocation to school districts for the purposes of college preparation and examination programs pursuant to Chapter 8 (commencing with Section 60830) of Part 33 of the Education Code.

(b) For the purposes of making computations required by Section 8 of Article XVI of the California Constitution, the appropriation made in this section shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code for the 1998–99 fiscal year, and shall be deemed 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 1998–99 fiscal year.

CHAPTER 796

An act to amend Sections 65400, 65583.1, and 65584 of the Government Code, relating to housing.

[Approved by Governor September 23, 1998. Filed with Secretary of State September 24, 1998.]

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

SECTION 1. It is the intent of the Legislature to amend the Planning and Zoning Law with respect to the housing element of a community's general plan to assist local governmental entities, builders, housing developers, sponsors, and planners in producing the greatest number of safe, sanitary, decent, and affordable housing units by the most cost-effective means possible.

SEC. 2. Section 65400 of the Government Code is amended to read:

65400. After the legislative body has adopted all or part of a general plan, the planning agency shall do both of the following:

(a) Investigate and make recommendations to the legislative body regarding reasonable and practical means for implementing the general plan or element of the general plan, so that it will serve as an effective guide for orderly growth and development, preservation and conservation of open-space land and natural resources, and the efficient expenditure of public funds relating to the subjects addressed in the general plan.

(b) (1) Provide an annual report to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development on the status of the plan and progress in its implementation, including the progress in meeting its share of regional housing needs determined pursuant to Section 65584 and local efforts to remove governmental constraints to the maintenance, improvement, and development of housing pursuant to paragraph (3) of subdivision (c) of Section 65583.

(2) The annual report required to be provided to the Office of Planning and Research and the Department of Housing and Community Development pursuant to this subdivision shall be prepared through the use of forms and definitions adopted by the Department of Housing and Community Development pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of, Chapter 4 (commencing with Section 11370) of, and Chapter 5 (commencing with Section 11500) of, Part 1 of Division 3 of Title 2). This report shall be provided to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development on or before July 1 of each year.

SEC. 3. Section 65583.1 of the Government Code is amended to read:

65583.1. (a) The Department of Housing and Community Development, in evaluating a proposed or adopted housing element for consistency with state law, may allow a city or county to identify adequate sites, as required pursuant to Section 65583, by a variety of methods, including, but not limited to, redesignation of property to a more intense land use category and increasing the density allowed within one or more categories. Nothing in this section reduces the

responsibility of a city or county to identify, by income category, the total number of sites for residential development as required by this article.

(b) Sites that contain permanent housing units located on a military base undergoing closure or conversion as a result of action pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526), the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510), or any subsequent act requiring the closure or conversion of a military base may be identified as an adequate site if the housing element demonstrates that the housing units will be available for occupancy by households within the planning period of the element. No sites containing housing units scheduled or planned for demolition or conversion to nonresidential uses shall qualify as an adequate site.

Any city, city and county, or county using this subdivision shall address the progress in meeting this section in the reports provided pursuant to paragraph (1) of subdivision (b) of Section 65400.

(c) (1) The Department of Housing and Community Development may allow a city or county to substitute the provision of units for up to 25 percent of the community's obligation to identify adequate sites for any income category in its housing element pursuant to paragraph (1) of subdivision (c) of Section 65583 if the community includes in its housing element a program committing the local government to provide units in that income category within the city or county that will be made available through the provision of committed assistance during the planning period covered by the element to low- and very low income households at affordable housing costs or affordable rents, as defined in Sections 50052.5 and 50053 of the Health and Safety Code, and which meet the requirements of paragraph (2). Except as otherwise provided in this subdivision, the community may substitute one dwelling unit for one dwelling unit site in the applicable income category. The program shall do all of the following:

(A) Identify the specific, existing sources of committed assistance and dedicate a specific portion of the funds from those sources to the provision of housing pursuant to this subdivision.

(B) Indicate the number of units that will be provided to both low- and very low income households and demonstrate that the amount of dedicated funds is sufficient to develop the units at affordable housing costs or affordable rents.

(C) Demonstrate that the units meet the requirements of paragraph (2).

(2) Only units that comply with subparagraph (A), (B), or (C) qualify for inclusion in the housing element program described in paragraph (1), as follows:

(A) Units that are to be substantially rehabilitated with committed assistance from the city or county and constitute a net increase in the community's stock of housing affordable to low- and

very low income households. For purposes of this subparagraph, a unit is not eligible to be "substantially rehabilitated" unless all of the following requirements are met:

(i) At the time the unit is identified for substantial rehabilitation, (I) the local government has determined that the unit is at imminent risk of loss to the housing stock, (II) the local government has committed to provide relocation assistance pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 to any occupants temporarily or permanently displaced by the rehabilitation or code enforcement activity, (III) the local government requires that any displaced occupants will have the right to reoccupy the rehabilitated units, and (IV) the unit has been cited and found by the local code enforcement agency or a court to be unfit for human habitation and vacated or subject to being vacated because of the existence for not less than 120 days of four of the conditions listed in subdivisions (a) to (g), inclusive, of Section 17995.3 of the Health and Safety Code.

(ii) The rehabilitated unit will have long-term affordability covenants and restrictions that require the unit to be available to, and occupied by, persons or families of low- or very low income at affordable housing costs for at least 20 years or the time period required by any applicable federal or state law or regulation, except that if the period is less than 20 years, only one unit shall be credited as an identified adequate site for every three units rehabilitated pursuant to this section, and no credit shall be allowed for a unit required to remain affordable for less than 10 years.

(iii) Prior to initial occupancy after rehabilitation, the local code enforcement agency shall issue a certificate of occupancy indicating compliance with all applicable state and local building code and health and safety code requirements.

(B) Units that are located in a multifamily rental housing complex of 16 or more units, are converted with committed assistance from the city or county from nonaffordable to affordable by acquisition of the unit or the purchase of affordability covenants and restrictions for the unit, are not acquired by eminent domain, and constitute a net increase in the community's stock of housing affordable to low- and very low income households. For purposes of this subparagraph, a unit is not converted by acquisition or the purchase of affordability covenants unless all of the following occur:

(i) The unit is made available at a cost affordable to low- or very low income households.

(ii) At the time the unit is identified for acquisition, the unit is not available at a cost affordable to low- or very low income households.

(iii) At the time the unit is identified for acquisition the unit is not occupied by low- or very low income households.

(iv) The unit is in decent, safe, and sanitary condition at the time of occupancy.

(v) The acquisition price is not greater than 120 percent of the median price for housing units in the city or county.

(vi) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to persons of low or very low income for not less than 30 years.

(C) Units that will be preserved at affordable housing costs to persons or families of low or very low incomes with committed assistance from the city or county by acquisition of the unit or the purchase of affordability covenants for the unit. For purposes of this subparagraph, a unit shall not be deemed preserved unless all of the following occur:

(i) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to and reserved for occupancy by persons of the same or lower income group as the current occupants for a period of at least 40 years.

(ii) The unit is multifamily rental housing that receives governmental assistance under any of the following state and federal programs: Section 221(d)(3) of the National Housing Act (12 U.S.C. Sec. 1715*l*(d)(3) and (5)); Section 236 of the National Housing Act (12 U.S.C. Sec. 1715z-1); Section 202 of the Housing Act of 1959 (12 U.S.C. Sec. 1701q); for rent supplement assistance under Section 101 of the Housing and Urban Development Act of 1965, as amended (12 U.S.C. Sec. 1701s); under Section 515 of the Housing Act of 1949, as amended (42 U.S.C. Sec. 1485); and any new construction, substantial rehabilitation, moderate rehabilitation, property disposition, and loan management set-aside programs, or any other program providing project-based assistance, under Section 8 of the United States Housing Act of 1937, as amended (42 U.S.C. Sec. 1437f); any state and local multifamily revenue bond programs; local redevelopment programs; the federal Community Development Block Grant Program; and other local housing assistance programs or units that were used to qualify for a density bonus pursuant to Section 65916.

(iii) The city or county finds, after a public hearing, that the unit is eligible, and is reasonably expected, to change from housing affordable to low- and very low income households to any other use during the next five years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use.

(iv) The unit is in decent, safe, and sanitary condition at the time of occupancy.

(v) At the time the unit is identified for preservation it is available at affordable cost to persons or families of low or very low income.

(3) This subdivision does not apply to any city or county that, during the current or immediately prior planning period, as defined by Section 65588, has not met any of its share of the regional need for affordable housing, as defined in Section 65584, for low- and very low income households. A city or county shall document for any such housing unit that a building permit has been issued and all

development and permit fees have been paid or the unit is eligible to be lawfully occupied.

(4) For purposes of this subdivision, "committed assistance" means that the city or county enters into a legally enforceable agreement during the first two years of the housing element planning period that obligates sufficient available funds to provide the assistance necessary to make the identified units affordable and that requires that the units be made available for occupancy within two years of the execution of the agreement. "Committed assistance" does not include tenant-based rental assistance.

(5) For purposes of this subdivision, "net increase" includes only housing units provided committed assistance pursuant to subparagraph (A) or (B) of paragraph (2) in the current planning period, as defined in Section 65588, that were not provided committed assistance in the immediately prior planning period.

(6) For purposes of this subdivision, "the time the unit is identified" means the earliest time when any city or county agent, acting on behalf of a public entity, has proposed in writing or has proposed orally or in writing to the property owner, that the unit be considered for substantial rehabilitation, acquisition, or preservation.

(7) On July 1 of the third year of the planning period, as defined by Section 65588, in the report required pursuant to Section 65400, each city or county that has included in its housing element a program to provide units pursuant to subparagraph (A), (B), or (C) of paragraph (2) shall report in writing to the legislative body, and to the department within 30 days of making its report to the legislative body, on its progress in providing units pursuant to this subdivision. The report shall identify the specific units for which committed assistance has been provided or which have been made available to low- and very low income households, and it shall adequately document how each unit complies with this subdivision. If, by July 1 of the third year of the planning period, the city or county has not entered into an enforceable agreement of committed assistance for all units specified in the programs adopted pursuant to subparagraph (A), (B), or (C) of paragraph (2), the city or county shall, not later than July 1 of the fourth year of the planning period, adopt an amended housing element in accordance with Section 65585, identifying additional adequate sites pursuant to paragraph (1) of subdivision (c) of Section 65583 sufficient to accommodate the number of units for which committed assistance was not provided. If a city or county does not amend its housing element to identify adequate sites to address any shortfall, or fails to complete the rehabilitation, acquisition, purchase of affordability covenants, or the preservation of any housing unit within two years after committed assistance was provided to that unit, it shall be prohibited from identifying units pursuant to subparagraph (A), (B), or (C) of paragraph (2) in the housing element that it adopts for the next

planning period, as defined in Section 65588, above the number of units actually provided or preserved due to committed assistance.

SEC. 4. Section 65584 of the Government Code is amended to read:

65584. (a) For purposes of subdivision (a) of Section 65583, the share of a city or county of the regional housing needs includes that share of the housing need of persons at all income levels within the area significantly affected by a general plan of the city or county. The distribution of regional housing needs shall, based upon available data, take into consideration market demand for housing, employment opportunities, the availability of suitable sites and public facilities, commuting patterns, type and tenure of housing need, the loss of units contained in assisted housing developments, as defined in paragraph (8) of subdivision (a) of Section 65583, that changed to non-low-income use through mortgage prepayment, subsidy contract expirations, or termination of use restrictions, and the housing needs of farmworkers. The distribution shall seek to reduce the concentration of lower income households in cities or counties which already have disproportionately high proportions of lower income households. Based upon population projections produced by the Department of Finance and regional population forecasts used in preparing regional transportation plans, and in consultation with each council of governments, the Department of Housing and Community Development shall determine the regional share of the statewide housing need at least two years prior to the second revision, and all subsequent revisions as required pursuant to Section 65588. Based upon data provided by the department relative to the statewide need for housing, each council of governments shall determine the existing and projected housing need for its region. Within 30 days following notification of this determination, the department shall ensure that this determination is consistent with the statewide housing need. The department may revise the determination of the council of governments if necessary to obtain this consistency. The appropriate council of governments shall determine the share for each city or county consistent with the criteria of this subdivision and with the advice of the department subject to the procedure established pursuant to subdivision (c) at least one year prior to the second revision, and at five-year intervals following the second revision pursuant to Section 65588. The council of governments shall submit to the department information regarding the assumptions and methodology to be used in allocating the regional housing need. As part of the allocation of the regional housing need, the council of governments, or the department pursuant to subdivision (b), shall provide each city and county with data describing the assumptions and methodology used in calculating its share of the regional housing need. The department shall submit to each council of governments information regarding the assumptions and methodology to be used in allocating the regional

share of the statewide housing need. As part of its determination of the regional share of the statewide housing need, the department shall provide each council of governments with data describing the assumptions and methodology used in calculating its share of the statewide housing need. The councils of governments shall provide each city and county with the department's information. The council of governments shall provide a subregion with its share of the regional housing need, and delegate responsibility for providing allocations to cities and a county or counties in the subregion to a subregional entity if this responsibility is requested by a county and all cities in the county, a joint powers authority established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1, or the governing body of a subregional agency established by the council of governments, in accordance with an agreement entered into between the council of governments and the subregional entity that sets forth the process, timing, and other terms and conditions of that delegation of responsibility.

(b) For areas with no council of governments, the department shall determine housing market areas and define the regional housing need for cities and counties within these areas pursuant to the provisions for the distribution of regional housing needs in subdivision (a). If the department determines that a city or county possesses the capability and resources and has agreed to accept the responsibility, with respect to its jurisdiction, for the identification and determination of housing market areas and regional housing needs, the department shall delegate this responsibility to the cities and counties within these areas.

(c) (1) Within 90 days following a determination of a council of governments pursuant to subdivision (a), or the department's determination pursuant to subdivision (b), a city or county may propose to revise the determination of its share of the regional housing need in accordance with the considerations set forth in subdivision (a). The proposed revised share shall be based upon available data and accepted planning methodology, and supported by adequate documentation.

(2) Within 60 days after the time period for the revision by the city or county, the council of governments or the department, as the case may be, shall accept the proposed revision, modify its earlier determination, or indicate, based upon available data and accepted planning methodology, why the proposed revision is inconsistent with the regional housing need.

(A) If the council of governments or the department, as the case may be, does not accept the proposed revision, then the city or county shall have the right to request a public hearing to review the determination within 30 days.

(B) The city or county shall be notified within 30 days by certified mail, return receipt requested, of at least one public hearing regarding the determination.

(C) The date of the hearing shall be at least 30 days from the date of the notification.

(D) Before making its final determination, the council of governments or the department, as the case may be, shall consider comments, recommendations, available data, accepted planning methodology, and local geological and topographic restraints on the production of housing.

(3) If the council of governments or the department accepts the proposed revision or modifies its earlier determination, the city or county shall use that share. If the council of governments or the department grant a revised allocation pursuant to paragraph (1), the council of governments or the department shall ensure that the current total housing need is maintained. If the council of governments or department indicates that the proposed revision is inconsistent with the regional housing need, the city or county shall use the share which was originally determined by the council of governments or the department.

(4) The determination of the council of governments or the department, as the case may be, shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

(5) The council of governments or the department shall reduce the share of regional housing needs of a county if all of the following conditions are met:

(A) One or more cities within the county agree to increase its share or their shares in an amount which will make up for the reduction.

(B) The transfer of shares shall only occur between a county and cities within that county.

(C) The county's share of low-income and very low income housing shall be reduced only in proportion to the amount by which the county's share of moderate- and above moderate-income housing is reduced.

(D) The council of governments or the department, whichever assigned the county's share, shall have authority over the approval of the proposed reduction, taking into consideration the criteria of subdivision (a).

(6) The housing element shall contain an analysis of the factors and circumstances, with all supporting data, justifying the revision. All materials and data used to justify any revision shall be made available upon request by any interested party within seven days upon payment of reasonable costs of reproduction unless the costs are waived due to economic hardship.

(d) (1) Except as provided in paragraph (2), any ordinance, policy, or standard of a city or county that directly limits, by number, the building permits that may be issued for residential construction, or limits for a set period of time the number of buildable lots that may be developed for residential purposes, shall not be a justification for

a determination or a reduction in the share of a city or county of the regional housing need.

(2) Paragraph (1) does not apply to any city or county that imposes a moratorium on residential construction for a specified period of time in order to preserve and protect the public health and safety. If a moratorium is in effect, the city or county shall, prior to a revision pursuant to subdivision (c), adopt findings that specifically describe the threat to the public health and safety and the reasons why construction of the number of units specified as its share of the regional housing need would prevent the mitigation of that threat.

(e) Any authority to review and revise the share of a city or county of the regional housing need granted under this section shall not constitute authority to revise, approve, or disapprove the manner in which the share of the city or county of the regional housing need is implemented through its housing program.

(f) A fee may be charged interested parties for any additional costs caused by the amendments made to subdivision (c) by Chapter 1684 of the Statutes of 1984 reducing from 45 to seven days the time within which materials and data shall be made available to interested parties.

(g) Determinations made by the department, a council of governments, or a city or county pursuant to this section are exempt from the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code.

SEC. 5. Pursuant to Section 17579 of the Government Code, the Legislature finds that there is no mandate contained in this act that will result in costs incurred by a local agency or school district for a new program or higher level of service which require reimbursement pursuant to Section 6 of Article XIII B of the California Constitution and Part 7 (commencing with Section 17500) of Division 4 of Title 2 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 797

An act relating to the Public Utilities Commission.

[Approved by Governor September 23, 1998. Filed with Secretary of State September 24, 1998.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) As a result of State Board Order No. WR 95-10 by the State Water Resources Control Board, the California-American Water Company must cease and desist diligently from diverting approximately 10,730 acre-feet of water annually from the Carmel River or its underflow.

(b) The California-American Water Company has filed an application with the Public Utilities Commission for a certificate that the present and future public convenience and necessity require the company to construct and operate a 24,000 acre-foot Carmel River Dam and Reservoir in its Monterey Division and to recover all present and future costs in connection therewith in rates.

(c) The Public Utilities Commission, after the public participation hearing and prehearing conference held in Monterey, in its June 23, 1997, Joint Ruling, determined that the issues regarding the application of the California-American Water Company fall into three broad interrelated, categories: environmental, financial, and alternative water strategies. The commission also found that the necessity to secure the Monterey Peninsula's water supply greatly predates the current crises, and that the company's dam proposal is the latest of several projects that have received serious consideration. Further, the commission noted that "[t]he challenge for the community is to achieve closure: some project or combination of projects must be chosen and completed, or long-term water rationing is likely to be unavoidable for this community."

(d) Decision No. 98-08-036, adopted by the Public Utilities Commission on August 6, 1998, requires the California-American Water Company to prepare a long-term contingency plan describing the program or combination of programs that the company would pursue if for any reason the new Carmel River Dam project does not go forward.

(e) Because of both the long-term difficulties in the water needs of the Monterey Peninsula, and the present urgency to resolve those water needs, the Legislature intends that an environmentally sound water source for the water be secured as quickly as possible in a responsible manner. It is also the policy of the Legislature that in order to achieve closure in the Monterey community it is necessary that the residents served by the Monterey Peninsula Water Management District be provided two water solutions: (a) the dam proposed by the California-American Water Company and (b) a long-term contingency plan.

SEC. 2. (a) Notwithstanding any other provision of law, the Public Utilities Commission, in consultation with the California-American Water Company , the Department of Water Resources, and other affected interests, shall prepare a long-term contingency plan described in Decision No. 98-08-036.

(b) The Public Utilities Commission shall set forth the criteria that it uses in deciding upon the program or combination of programs included in the plan.

(c) Nothing in this section shall override or interfere with the enforcement of decisions or orders of the State Water Resources Control Board.

SEC. 3. The Public Utilities Commission, in making its determination on Application No. 97-03-052, shall consult with the Department of Water Resources. Nothing in this section shall amend or in any way alter the authority of the Public Utilities Commission to make the decision on Application No. 97-03-052.

CHAPTER 798

An act to amend Section 6204 of the Business and Professions Code, relating to the State Bar of California.

[Approved by Governor September 23, 1998. Filed with Secretary of State September 24, 1998.]

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

SECTION 1. Section 6204 of the Business and Professions Code is amended to read:

6204. (a) The parties may agree in writing to be bound by the award of arbitrators appointed pursuant to this article at any time after the dispute over fees, costs, or both, has arisen. In the absence of such an agreement, either party shall be entitled to a trial after arbitration if sought within 30 days, pursuant to subdivisions (b) and (c), except that if either party willfully fails to appear at the arbitration hearing in the manner provided by the rules adopted by the board of governors, that party shall not be entitled to a trial after arbitration. The determination of willfulness shall be made by the court. The party who failed to appear at the arbitration shall have the burden of proving that the failure to appear was not willful. In making its determination, the court may consider any findings made by the arbitrators on the subject of a party's failure to appear.

(b) If there is an action pending, the trial after arbitration shall be initiated by filing a rejection of arbitration award and request for trial after arbitration in that action within 30 days after mailing of notice of the award. If the rejection of arbitration award has been filed by the plaintiff in the pending action, all defendants shall file a responsive pleading within 30 days following service upon the defendant of the rejection of arbitration award and request for trial after arbitration. If the rejection of arbitration award has been filed by the defendant in the pending action, all defendants shall file a responsive pleading within 30 days after the filing of the rejection of arbitration award and request for trial after arbitration. Service may be made by mail on any party who has appeared; otherwise service shall be made in the manner provided in Chapter 4 (commencing

with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure. Upon service and filing of the rejection of arbitration award, any stay entered pursuant to Section 6201 shall be vacated, without the necessity of a court order.

(c) If no action is pending, the trial after arbitration shall be initiated by the commencement of an action in the court having jurisdiction over the amount of money in controversy within 30 days after mailing of notice of the award. After the filing of such an action, the action shall proceed in accordance with the provisions of Part 2 (commencing with Section 307) of the Code of Civil Procedure, concerning civil actions generally.

(d) The party seeking a trial after arbitration shall be the prevailing party if that party obtains a judgment more favorable than that provided by the arbitration award, and in all other cases the other party shall be the prevailing party. The prevailing party may, in the discretion of the court, be entitled to an allowance for reasonable attorneys' fees and costs incurred in the trial after arbitration, which allowance shall be fixed by the court. In fixing the attorneys' fees, the court shall consider the award and determinations of the arbitrators, in addition to any other relevant evidence.

(e) Except as provided in this section, the award and determinations of the arbitrators shall not be admissible nor operate as collateral estoppel or res judicata in any action or proceeding.

CHAPTER 799

An act to add Article 9 (commencing with Section 885) to Chapter 4 of Part 1 of Division 1 of the Public Utilities Code, relating to telecommunications.

[Approved by Governor September 23, 1998. Filed with Secretary of State September 24, 1998.]

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

SECTION 1. Article 9 (commencing with Section 885) is added to Chapter 4 of Part 1 of Division 1 of the Public Utilities Code, to read:

Article 9. Telephone Prepaid Debit Cards

885. (a) Any entity offering the services of telephone prepaid debit cards is subject to the registration requirements of Section 1013, commencing January 1, 1999, unless that entity is certificated by the commission to provide telephone service. An entity subject to this requirement includes any of the following:

(1) An entity that is an underlying interexchange carrier and offers and administers the services of telephone prepaid debit cards.

(2) An entity that purchases bulk time from an underlying interexchange carrier and thereby offers and administers the services of telephone prepaid debit cards (that is, the entity repackages and resells the time as prepaid debit cards).

(b) Resellers of telephone prepaid debit cards who do not engage in any of the activities described in subdivision (a) are not subject to the registration requirement imposed by subdivision (a). Resellers that are not subject to the registration requirement imposed by subdivision (a) include both of the following:

(1) Retailers who only provide a marketing venue for telephone prepaid debit cards.

(2) Entities that only print information on telephone prepaid debit cards.

(c) Telephone prepaid debit cards offered in a promotional manner or gratis shall not subject the provider to the registration requirement imposed by subdivision (a), unless the cards are issued in conjunction with the sale of related goods or services.

(d) The commission shall maintain a list of certificated interexchange carriers and shall supply that information upon request.

886. Entities that are required to register, but have failed to do so, or entities that are denied registration by the commission, shall not offer the services of telephone prepaid debit cards. Entities that are required to register, but have failed to do so, and entities denied registration that offer telephone prepaid debit cards shall be subject to fines or other sanctions that may be ordered by the commission.

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 800

An act to amend Section 8880.4 of the Government Code, relating to the state lottery.

[Approved by Governor September 23, 1998. Filed with Secretary of State September 24, 1998.]

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

SECTION 1. This act shall be known and referred to as the "Cardenas Textbook Act of 2000."

SEC. 2. Section 8880.4 of the Government Code is amended to read:

8880.4. Revenues of the state lottery shall be allocated as follows:

(a) Not less than 84 percent of the total annual revenues from the sale of state lottery tickets or shares shall be returned to the public in the form of prizes and net revenues to benefit public education.

(1) Fifty percent of the total annual revenues shall be returned to the public in the form of prizes as described in this chapter.

(2) At least 34 percent of the total annual revenues shall be allocated to the benefit of public education, as specified in Section 8880.5. However, for the 1998–99 fiscal year and each fiscal year thereafter, 50 percent of any increase in the amount calculated pursuant to this paragraph from the amount calculated in the 1997–98 fiscal year shall be allocated to school districts and community college districts for the purchase of instructional materials, on the basis of an equal amount per unit of average daily attendance, as defined by law, and through a fair and equitable distribution system across grade levels.

(3) All unclaimed prize money shall revert to the benefit of public education, as provided for in subdivision (e) of Section 8880.32.

(4) All of the interest earned upon funds held in the State Lottery Fund shall be allocated to the benefit of public education, as specified in Section 8880.5. This interest is in addition to, and shall not be considered as any part of, the 34 percent of the total annual revenues that is required to be allocated for the benefit of public education as specified in paragraph (2).

(5) No more than 16 percent of the total annual revenues shall be allocated for payment of expenses of the lottery as described in this chapter. To the extent that expenses of the lottery are less than 16 percent of the total annual revenues, any surplus funds also shall be allocated to the benefit of public education, as specified in this section or in Section 8880.5.

(b) Funds allocated for the benefit of public education pursuant to subdivision (a) are in addition to other funds appropriated or required under existing constitutional reservations for educational purposes. No program shall have the amount appropriated to support that program reduced as a result of funds allocated pursuant to subdivision (a). Funds allocated for the benefit of public education pursuant to subdivision (a) shall not supplant funds committed for child development programs.

(c) None of the following shall be considered revenues for the purposes of this section:

(1) Revenues recorded as a result of a nonmonetary exchange. "Nonmonetary exchange" means a reciprocal transfer, in compliance with generally accepted accounting principles, between the lottery and another entity that results in the lottery acquiring assets or services and the lottery providing assets or services.

(2) Reimbursements received by the lottery for the cost of goods or services provided by the lottery that are less than or equal to the cost of the same goods or services provided by the lottery.

(d) Reimbursements received in excess of the cost of the same goods and services provided by the lottery, as specified in paragraph (2) of subdivision (c), are not a part of the 34 percent of total annual revenues required to be allocated for the benefit of public education, as specified in paragraph (2) of subdivision (a). However, this amount shall be allocated for the benefit of public education as specified in Section 8880.5.

SEC. 3. Sections 1 and 2 of this act amend the California State Lottery Act of 1984, an initiative statute, and shall become effective only when submitted to and approved by the voters. Sections 1 and 2 of this act shall be submitted to the electors at the next statewide election occurring at least 131 days after this act is adopted in the same manner as measures submitted to the voters by the Legislature, as provided in the Elections Code.

CHAPTER 801

An act to add and repeal Sections 51871, 51872, 51873, and 51874 of, and to add and repeal the heading of Article 15 (commencing with Section 51870.5) to Chapter 5 of Part 28 of, the Education Code, relating to education technology, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1998. Filed with Secretary of State September 24, 1998.]

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

SECTION 1. The heading of Article 15 (commencing with Section 51870.5) is added to Chapter 5 of Part 28 of the Education Code, to read:

Article 15. Education Technology

SEC. 2. Section 51871 is added to Article 15 (commencing with Section 51870.5) of Chapter 5 of Part 28 of the Education Code, to read:

51871. (a) The California Technology Assistance Project shall be established by the State Department of Education to administer a regionalized network of technical assistance to schools and school districts on the implementation of education technology as set forth in policies of the State Board of Education. The California Technology Assistance Project shall be composed of regional consortia that will work collaboratively with school districts and county offices of education in order to meet locally defined technology-based needs, as identified in the certified technology plans for their client school districts, including, but not necessarily limited to, all of the following areas:

(1) Staff development.

(2) Learning resources.

(3) Hardware.

(4) Telecommunications infrastructure.

(5) Technical assistance to school districts in developing a support system to operate and maintain an education technology infrastructure, including improving pupil recordkeeping and tracking related to pupil instruction.

(6) Coordination with other federal, state, and local programs.

(7) Funding.

(b) The State Board of Education shall award grants to fund a school district or county office of education in each region of the California Technology Assistance Project to act as the lead agency to administer the services of that region. The term of a grant awarded pursuant to this section may not exceed three years. Grant funding may be awarded and received for subsequent terms of three years as provided in this section. The lead agency shall be chosen through a process based on all of the following:

(1) Knowledge of technology.

(2) Technology planning and technical assistance.

(3) A proven record of success in providing staff development in technology and curriculum integration.

(4) A demonstrated ability to work collaboratively with school districts, county offices of education, and businesses in the region.

(5) The ability to deliver services specified in this article to all school districts and county offices of education in their region.

(6) The degree of support for the application by school districts and county offices of education in the region.

(7) Review of the annual report of the services provided by the lead agency submitted to the State Board of Education and school districts and county offices of education within the California Technology Assistance Project region. School districts and county offices of education within a California Technology Assistance Project region shall have the opportunity to comment on the report.

(c) To receive funding for the second and third year of a grant awarded pursuant to subdivision (b), a lead agency shall submit an annual report to the State Board of Education for approval that

describes the services provided, the persons served, and the funds expended for those services in the prior year. School districts and county offices of education within the California Technology Assistance Project region shall have an opportunity to comment on the report. The State Department of Education shall release grant funding for a second or third year only after the annual report has been approved by the State Board of Education.

(d) Funding to support the regional education technology services provided by the California Technology Assistance Project shall be provided through the annual Budget Act. Funding of the regional lead agencies shall be approved by the State Board of Education based on adopted guidelines.

SEC. 3. Section 51872 is added to Article 15 (commencing with Section 51870.5) of Chapter 5 of Part 28 of the Education Code, to read:

51872. (a) The State Department of Education shall administer this article. The duties of the State Department of Education shall include, but are not necessarily limited to, the following:

(1) Assisting the State Board of Education on education technology plans, policies, programs, and activities.

(2) Providing for the statewide coordination, planning, and evaluation of education technology programs and resources.

(3) Advancing the use of technology in the curriculum and in the administration of elementary and secondary schools.

(b) Funding to support the activities described in subdivision (a), including educational technology services which are more efficiently and effectively delivered at a statewide level, shall be provided to the State Department of Education through the annual Budget Act. Based upon recommendations from the California Technology Assistance Project and other interested parties, the State Board of Education shall fund school districts and county offices of education to provide centralized statewide educational technology services that address locally defined needs but that are more efficiently and effectively provided on a statewide basis.

SEC. 4. Section 51873 is added to Article 15 (commencing with Section 51870.5) of Chapter 5 of Part 28 of the Education Code, to read:

51873. School districts, county offices of education, and state special schools may apply to the State Board of Education to participate in grant programs related to education technology, including, but not limited to, staff development, research and development, and evaluation and dissemination of education technology resources.

SEC. 5. Section 51874 is added to Article 15 (commencing with Section 51870.5) of Chapter 5 of Part 28 of the Education Code, to read:

51874. Sections 51871, 51872, 51873, this section, and the heading of 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.

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 continue to implement the California Technology Assistance Project established pursuant to Section 51871 of the Education Code, it is necessary that this act take effect immediately.

CHAPTER 802

An act to add Section 17538.9 to the Business and Professions Code, relating to advertising.

[Approved by Governor September 23, 1998. Filed with Secretary of State September 24, 1998.]

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

SECTION 1. Section 17538.9 is added to the Business and Professions Code, to read:

17538.9. (a) For the purposes of this section:

(1) "Company" refers to any entity providing prepaid calling services to the public using its own or a resold telecommunications network.

(2) "Prepaid calling services" or "services" refers to any prepaid telecommunications service that allows consumers to originate calls through an access number and authorization code, whether manually or electronically dialed.

(3) "Prepaid calling card" or "card" means any object containing an access number and authorization code that enables a consumer to use prepaid calling services. It does not include any object of that type used for promotional purposes.

(4) "Cellular telephone services" means facilities-based, commercial mobile telephone services.

(b) The following standards and requirements for consumer disclosure and services shall apply with respect to the advertising and sale of prepaid calling cards and prepaid calling services:

(1) Any advertisement of the price, rate, or unit value in connection with the sale of prepaid calling services shall include a disclosure of any geographic limitation to the advertised price, rate, or unit value, as well as a disclosure of any additional surcharges, call setup charges, or fees applicable to the advertised price, rate, or unit value.

(2) The following information shall be legibly printed on the card:

(A) The name of the company.

(B) A toll-free customer service number.

(C) A toll-free network access number, if required to access service.

(D) The authorization code, if required to access service.

(E) The expiration date or policy, if applicable, except where paragraph (6) applies.

(3) The company shall print legibly on the card or packaging, and the vendor shall make available in a prominent area at the point of sale of the prepaid calling card or prepaid calling services, the following information:

(A) Any surcharges or fees, including monthly fees, per-call access fees, or surcharges for the first minute of use that may be applicable to the use of the prepaid calling card or prepaid calling services within the United States.

(B) Whether there are additional or different prices, rates, or unit values applicable to international usage of the prepaid calling card or prepaid calling services.

(C) The minimum charge per call, such as a three-minute minimum charge, if any.

(D) The charge for calls that do not connect, if any.

(E) The definition of the term "unit," if applicable.

(F) The billing decrement.

(G) The name of the company.

(H) The recharge policy, if any.

(I) The refund policy, if any.

(J) The expiration policy, if any.

(K) The 24-hour customer service toll-free telephone number required in paragraph (4).

(4) Each company shall establish and maintain a toll-free customer service telephone number with a live operator to answer incoming calls 24-hours a day, seven days a week, through which consumers may lodge relevant complaints and through which the following information may be obtained by consumers:

(A) All rates, surcharges, and fees.

(B) The company's recharge, refund, and expiration policies.

(C) The balance of use in the consumer's account, if applicable.

A company offering prepaid cellular telephone services shall be deemed to be in compliance with the requirements of this paragraph if, when a request for information is made outside of normal business hours, that company provides the information requested on the next business day.

(5) Each company that issues prepaid calling cards or prepaid calling services shall provide a refund to any purchaser of a prepaid calling card or prepaid calling services if the network services associated with that card or services fail to operate in a commercially reasonable manner. The refund shall be in an amount not less than the value remaining on the card or in the form of a replacement card, and shall be provided to the consumer within 60 days from the date

of receipt of notification from the consumer that the card has failed to operate in a commercially reasonable manner.

(6) Cards without a specific expiration date or policy printed on the card, and with a balance of service remaining, shall be considered active for a minimum of one year from the date of purchase, or if recharged, from the date of the last recharge.

(7) In the case of prepaid calling cards or services utilized at a payphone, the company may provide voice prompt notification of any applicable payphone surcharges, in lieu of providing notice of surcharges as required by paragraph (1) and by subparagraph (A) of paragraph (3).

(c) This section shall become operative on July 1, 1999.

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 803

An act to add and repeal Chapter 12 (commencing with Section 11020) of Part 7 of the Education Code, relating to academic achievement partnerships, and making an appropriation therefor.

[Approved by Governor September 23, 1998. Filed with Secretary of State September 24, 1998.]

On this date I have signed Assembly Bill No. 1292.

This bill would enact the Academic Improvement and Achievement Act to provide grants to school districts working in partnership with colleges, businesses, and community organizations to improve student performance and increase college participation.

I am reducing the $20 million local assistance appropriation because substantial partnership start-up activities required for program eligibility will limit the number of partnerships qualifying for funding during 1998–99. Additionally, the appropriation for the State Department of Education to administer this program and the college preparation programs enacted by AB 2216, AB 2363 and SB 1697 would exceed the department's administrative costs.

Therefore, I am reducing the appropriation in paragraph (a) of Section 2 from $20,000,000 to $5,000,000, and I am reducing the appropriation in paragraph (b) of Section 2 from $300,000 to $160,000.

SEC. 2. (a) The sum of five million dollars ($5,000,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for allocation to local education agencies for the purposes of, and in accordance with, Chapter 12 (commencing with Section 11020) of Part 7 of the Education Code.

(b) The sum of one hundred sixty thousand dollars ($160,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction to administer the grants under Chapter 12 (commencing with Section 11020) of Part 7 of the Education Code, under SB 1697 of the 1997–98 Regular Session if that bill is enacted and takes effect on or before January 1, 1999, under AB 2216 of the 1997–98 Regular Session if that bill is enacted and takes effect on or before January 1, 1999, and under AB 2363 of the 1997–98 Regular Session if that bill is enacted and takes effect on or before January 1, 1999.

(c) For the purposes of making computations required by Section 8 of Article XVI of the California Constitution, the appropriation made in subdivision (a) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, and shall be deemed 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 year in which the funds are appropriated.

PETE WILSON, Governor

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

SECTION 1. Chapter 12 (commencing with Section 11020) is added to Part 7 of the Education Code, to read:

CHAPTER 12. ACADEMIC IMPROVEMENT AND ACHIEVEMENT ACT

11020. (a) Local educational agencies may submit proposals to the Superintendent of Public Instruction to fund activities that will increase the percentage of pupils at qualifying high schools that meet the requirements for admission to the California State University or the University of California. The Superintendent of Public Instruction shall recommend, and the State Board of Education shall adopt, criteria and regulations for the implementation of this chapter. Grants awarded pursuant to this chapter shall be used by the schoolsite to provide academic assistance and services to pupils necessary to inform pupils about the benefits of, and requirements for, higher education and to prepare pupils for college entrance. Funds awarded pursuant to this chapter shall not be used as a local match for any other state funded outreach, academic achievement, or college preparation program. These activities shall be designed to accomplish that which is set forth in paragraphs (1) to (3), inclusive, and either paragraph (4) or (5) of the following:

(1) Significant improvement on scores on nationally normed, standardized tests used for college admission decisions.

(2) Significant increases in the number and percentage of pupils who enroll in and complete the A-F course requirements that are a prerequisite for admission to the California State University and the University of California with at least a "C" grade.

(3) Increases in the college participation rate.

(4) Significant increases in the number and percentage of pupils who take nationally normed, standardized tests used for college admission decisions, and increases in the results of the assessment administered through Article 4 (commencing with Section 60640) of Chapter 5 of Part 33.

(5) Significant increases in the number and percentage of pupils who enroll in and complete the advanced placement courses and receive a score of "3" or above.

(b) Applications by local educational agencies to the Superintendent of Public Instruction for the funding of academic achievement programs pursuant to this chapter shall include all the following elements to be considered complete and eligible for consideration:

(1) Data from the prior fiscal year for all of the items listed in subdivision (a).

(2) An assessment that identifies the amount of improvement at the qualifying school that is necessary in order to perform at a level equivalent to the statewide average on each of the items listed in paragraphs (1) to (5), inclusive, of subdivision (a).

(3) A comprehensive plan developed by the regional partnership describing how the funds provided pursuant to this chapter in combination with the matching funds provided by other participants in the regional partnership will be used to improve performance on any of the items listed in subdivision (a).

(4) An accountability plan that assesses the progress made by students at the qualifying school towards performance at the 1997–98 statewide average on each of the items listed in paragraphs (1) to (5), inclusive, of subdivision (a).

(5) Evidence that each partner in the regional partnership is prepared to commit the amount of funds and other support outlined in the comprehensive plan required pursuant to paragraph (3). Local education agencies shall provide evidence that the total contribution from all of the partners, including, but not necessarily limited to, the reasonable value of in-kind goods or services, equals the amount of the grant.

(c) As used in this chapter, the following terms have the following meanings, unless the context clearly requires otherwise:

(1) "Local educational agency" means school districts, county offices of education, or charter schools. "Institution of higher education" means any of the following:

(A) A California community college district.

(B) A campus of the California State University.

(C) A campus of the University of California.

(D) A member institution of the Association of Independent California Colleges and Universities.

(2) "Qualifying school" means a comprehensive high school that provides instruction in any of grades 9 to 12, inclusive, and the percentage of pupils who graduate from the school and are eligible

for admission to the California State University or the University of California in the following year is below the statewide average according to information from the California Postsecondary Education Commission.

(3) "Regional organization" includes, but is not limited to, business, labor, and community-based organizations.

(4) "Regional partnership" means a combination of at least one school district or county office of education, at least one institute of higher education, and at least one regional organization, each having an interest in and capacity to influence education in the region. "Regional partnership" is not limited to a combination formed pursuant to this chapter after the operative date of this chapter, but may also include a partnership in existence immediately preceding the operative date of this chapter if it complies with all of the requirements of this section. A partner may participate in more than one partnership and a partnership may encompass a geographic area that overlaps with an area covered by another partnership.

11021. (a) Pursuant to regulations and criteria approved by the State Board of Education, the Superintendent of Public Instruction shall develop an application inviting local educational agencies to apply to receive funds for qualifying schools, subject to an appropriation of funds for purposes of this section.

(b) Funds shall be distributed and dispersed equitably throughout the state in a manner consistent with the purposes of this chapter and that ensures that qualifying schools located in rural, urban, and suburban areas have access to these programmatic funds.

(c) Priority in the allocation of funding to qualifying schools shall be based upon a combination of the following factors that shall be given equal consideration:

(1) The qualifying school's relative low ranking in comparison to the statewide average percentage of high school graduates who complete the A-F course requirements for admission to the California State University and the University of California with a "C" grade or better.

(2) The qualifying school's relative low ranking in comparison to the statewide average percentage of high school pupils who take the nationally normed, standardized tests used for college admission decisions.

(3) The qualifying school's relative low ranking in comparison to other schools maintaining the same grades in any of grades 9 to 12, inclusive, of the school-wide average scores on nationally normed, standardized tests used for college admission decisions.

(d) Funds allocated to qualifying schools pursuant to this chapter shall be awarded annually by the Superintendent of Public Instruction for a period of up to four years only if funding is appropriated in the annual Budget Act if both of the following conditions are met:

(1) After the second full funded year, and each year thereafter, the grant may be renewed on an annual basis for up to two additional years if the local educational agency submits data to the State Department of Education that demonstrates the necessary qualifying levels of improvement at the qualifying school in comparison to the year immediately preceding the year in which funds were provided to the school pursuant to this chapter, in accordance with subdivision (a) of Section 11020.

(2) The Superintendent of Public Instruction determines that the data submitted on behalf of qualifying schools demonstrates progress in each of the areas identified in subdivision (a) of Section 11020, as determined by relative improvement levels approved by the State Board of Education.

(e) The total amount of funds allocated to a local educational agency pursuant to this chapter shall be matched on a dollar-for-dollar basis by the higher education partners.

(f) Funds allocated pursuant to this section may not exceed one hundred dollars ($100) per pupil, nor shall it be less than twenty thousand dollars ($20,000), at a qualifying school in any single fiscal year.

(g) Funds appropriated pursuant to this chapter may supplement, but may not supplant, any existing program or service provided at a qualifying school that is consistent with this chapter.

(h) No more than 5 percent of the amount that is appropriated to a local educational agency for expenditure at a qualifying school pursuant to this chapter shall be used for administrative costs.

(i) Grant recipients shall ensure that parents or guardians of all 8th grade pupils are notified of the course requirements that are a prerequisite for admission to the California State University and the University of California.

11022. Only those local educational agencies for which the allocation of state funds are included within the computation of the state's minimum funding obligation to school districts and community college districts under Section 8 of Article XVI of the California Constitution shall receive allocations for the purposes of this chapter.

11023. The Superintendent of Public Instruction, shall recommend, and the State Board of Education shall approve, a plan for the comprehensive evaluation of the program authorized in this chapter. The Superintendent of Public Instruction shall complete the evaluation and submit it to the State Board of Education by July 1, 2003. The State Board of Education shall submit the final evaluation to the Legislature by December 31, 2003, on all of the following:

(a) Changes in the number and percent of pupils who took nationally normed, standardized tests used for college admission decisions.

(b) Changes in the school-wide average score on nationally normed, standardized tests used for college admission decisions.

(c) Changes in the number and percentage of pupils who complete the A-F course requirements with at least a "C" grade.

(d) Changes in the number and percentage of pupils who complete advanced placement courses and received a score of "3" or above.

(e) Changes in the number of advanced placement courses taken by pupils.

(f) Changes in the number and percentage of parents or guardians of 8th grade pupils who were notified of the course requirements that are a prerequisite for admission to the California State University or the University of California.

(g) The college participation rates at qualifying schools before and after the implementation of program activities pursuant to this chapter.

(h) Recommendations for changes to the provisions in this chapter that could further increase the percentage of high school pupils eligible for admission to the California State University or the University of California upon graduation from high school.

11024. It is the intent of the Legislature that grants pursuant to this chapter be funded by an appropriation in the annual Budget Act.

11024.5. This chapter shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute that is enacted before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. (a) The sum of twenty million dollars ($20,000,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for allocation to local education agencies for the purposes of, and in accordance with, Chapter 12 (commencing with Section 11020) of Part 7 of the Education Code.

(b) The sum of three hundred thousand dollars ($300,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction to administer the grants under Chapter 12 (commencing with Section 11020) of Part 7 of the Education Code, under SB 1697 of the 1997–98 Regular Session if that bill is enacted and takes effect on or before January 1, 1999, under AB 2216 of the 1997–98 Regular Session if that bill is enacted and takes effect on or before January 1, 1999, and under AB 2363 of the 1997–98 Regular Session if that bill is enacted and takes effect on or before January 1, 1999.

(c) For the purposes of making computations required by Section 8 of Article XVI of the California Constitution, the appropriation made in subdivision (a) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, and shall be deemed 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 year in which the funds are appropriated.

CHAPTER 804

An act to amend Section 21201 of, and to add Section 21204 to, the Financial Code, relating to pawnbrokers.

[Approved by Governor September 23, 1998. Filed with Secretary of State September 24, 1998.]

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

SECTION 1. Section 21201 of the Financial Code is amended to read:

21201. Every loan made by a pawnbroker for which goods are received in pledge as security shall be evidenced by a written contract, a copy of which shall be furnished to the borrower. The loan contract shall provide a four-month loan period, shall set forth the loan period and the date on which the loan is due and payable, and shall clearly inform the borrower of his or her right to redeem the pledge during the loan period.

Every loan contract shall contain the following notice, in at least 8-point bold face type and circumscribed by a box, immediately above the space for the borrower's signature:

"You may redeem the property you have pledged at any time until the close of business on _____ [fill in date four months from date loan begins]. To redeem, you must pay the amount of the loan and the applicable charges which have accrued through the date on which you redeem."

Every pawnbroker shall retain in his or her possession every article pledged to him or her for a period of four months. During such period the borrower may redeem the articles upon payment of the amount of the loan and the applicable charges.

If any pledged article is not redeemed during the four-month loan period as provided herein, and the borrower and pawnbroker do not mutually agree in writing to extend the loan period, the pawnbroker shall notify the borrower within 30 days after expiration of the loan period. If the pawnbroker fails to notify the borrower within 30 days after the expiration of the loan period, the pawnbroker shall not charge interest from the day after the expiration of the 30-day period. The pawnbroker shall notify the borrower either by registered mail, or by certified mail, or by regular mail for which a certificate of mailing is issued by the United States Postal Service addressed to his or her last known address of the termination of the loan period, and extending the right of redemption, during posted business hours, for a period of 10 days from date of mailing of that notice. The 10-day

notice shall include a statement that: "If the tenth day falls on a day when the pawnshop is closed, the time period is extended to the next day that the pawnshop is open."

However, the posted schedule of charges required pursuant to Section 21200.5 shall contain a notice informing the borrower that if he or she desires, the pawnbroker shall send the notice of termination of the loan period by registered or certified mail with return receipt requested, upon prepayment of the mailing costs. If any pledged article is not redeemed within the 10-day notice period, the pawnbroker shall become vested with all right, title, and interest of the pledgor, or his or her assigns, to the pledged article, to hold and dispose of as his or her own property. Any other provision of law relating to the foreclosure and sale of pledges shall not be applicable to any pledge the title to which is transferred in accordance with this section. The pawnbroker shall not sell any article of pledged property until he or she has become vested with the title to that property pursuant to this section. The sale of pledged property is a misdemeanor pursuant to Section 21209.

SEC. 2. Section 21204 is added to the Financial Code, to read:

21204. Every pawnbroker, upon redemption of a loan contract, shall provide the borrower with a receipt that correctly states in detail all of the fees, charges, and compensation paid by the borrower to the pawnbroker.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

SEC. 4. Section 1 of this act shall not become operative if Senate Bill 1685 of the 1997–98 Regular Session is also enacted and becomes operative on or before January 1, 1999, and that bill amends Section 21201 of the Financial Code.

CHAPTER 805

An act to add and repeal Chapter 3.8 (commencing with Section 8660) of Part 6 of the Education Code, relating to the California State Summer School for Mathematics and Science, and making an appropriation therefor.

[Approved by Governor September 23, 1998. Filed with Secretary of State September 24, 1998.]

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

SECTION 1. Chapter 3.8 (commencing with Section 8660) is added to Part 6 of the Education Code, to read:

CHAPTER 3.8. CALIFORNIA STATE SUMMER SCHOOL FOR MATHEMATICS AND SCIENCE

8660. (a) The California State Summer School for Mathematics and Science is hereby created to establish a multidisciplinary mathematics and science training program to enable pupils with demonstrated academic excellence in mathematics and science to receive intensive training in these subjects.

(b) The California State Summer School for Mathematics and Science shall provide a training ground for pupils who wish to study advanced mathematics or science or to pursue careers that require a high degree of mathematics or scientific training.

8661. The California State Summer School for Mathematics and Science shall be governed by the State Board of Education.

8662. (a) The State Board of Education shall adopt rules and regulations governing fees, applications, and admission procedures for the California State Summer School for Mathematics and Science, and any other procedure or operation necessary to implement the requirements of this chapter.

(b) The rules and regulations adopted pursuant to subdivision (a) shall include, but shall not necessarily be limited to, a provision that requires a pupil to meet the criteria set forth in subdivision (a) of Section 8660 requiring pupils to have demonstrated academic excellence in mathematics and science and to meet one of the following criteria to be eligible for admission to the summer school:

(1) The pupil graduated, or will graduate, from the 8th grade at the end of the school year immediately preceding the summer school session for which he or she is applying.

(2) The pupil is currently enrolled in any of grades 9 to 12, inclusive.

(3) The pupil graduated from high school during the school year immediately preceding the summer school session for which he or she is applying.

(c) A pupil's participation in the summer school shall not be credited toward the pupil's completion of the course of study prescribed for graduation from high school, unless the pupil's regular school of attendance tenders payment to the pupil, no later than the last day of the summer school session, for all application and other fees and expenses charged to the pupil by the summer school that would not be charged to a pupil enrolled in the public school system.

8663. (a) The Legislature finds and declares that the admission of out-of-state pupils to the California State Summer School for Mathematics and Science will enhance the national and international standing of the pupils who attend the summer school, and increase the revenues to the school from both tuition and contributions.

(b) Pursuant to the eligibility criteria set forth in subdivision (b) of Section 8662, pupils who are not California residents, including residents of other countries, may be admitted to the California State Summer School for Mathematics and Science, not to exceed in any year 20 pupils or 5 percent of the total pupil population of the summer school, whichever is less. No admission under this subdivision shall result in the denial of admission under this chapter to a California resident who is eligible for that admission and satisfies applicable qualifications for admission.

8664. The State Board of Education shall perform the following duties:

(a) Provide for the operation and governance of the California State Summer School for Mathematics and Science.

(b) Appoint a person to fill the full-time, permanent, exempt position of Director of the California State Summer School for Mathematics and Science. The director shall employ two assistants, one for program operation and one for administration, and any other necessary staff.

(c) Develop a statewide application procedure. The procedure shall be implemented with the cooperation of the appropriate state and local agencies, including, but not limited to, school districts, the California State University, and the California Community Colleges. The University of California is urged to cooperate with the development of the application procedure. The cost of the application process shall be at least partially offset by charging each applicant a fee not to exceed twenty dollars ($20). Applicants who are unable to pay the fee shall petition the State Department of Education for a waiver, which shall be granted or denied pursuant to the rules and regulations adopted pursuant to subdivision (b) of Section 8669.

(d) Maintain an advisory committee or committees to assist the board in administering the summer school.

(e) Develop the curriculum of the summer school.

(f) Establish a nonprofit foundation to develop and receive private support for the summer school.

(g) Establish a permanent endowment fund for the summer school.

(h) Exercise any other powers necessary to carry out the purposes of this chapter.

8665. The State Department of Education shall assist the California State Summer School for Mathematics and Science by providing the following services:

(a) Developing and administering a process for the waiver of registration or program fees pursuant to this chapter.

(b) Distribution to all school districts in the state of notices and guidelines that describe the application procedure, site of the summer school, cost of participation, criteria for admission, and other pertinent information regarding the summer school.

8666. The period of instruction for the California State Summer School for Mathematics and Science shall be not less than four weeks and no more than six weeks in length. This section shall not be construed to prohibit two sessions per year, as long as the summer school commences no earlier than one week following the end of the regular school year, and concludes no later than one week prior to the commencement of the next regular school year.

8667. (a) The faculty of the California State Summer School for Mathematics and Science shall be selected annually, subject to the final approval of the director of the school, by the State Board of Education, upon consultation with a faculty selection panel convened by the board for that purpose. The faculty selection panel shall be composed of industry leaders and educators, selected to be broadly representative of the schools, industries, colleges, and universities located throughout the state. Members of the State Board of Education may serve on the faculty selection panel, but shall comprise no more than one-third of any faculty selection panel.

(b) The faculty shall be comprised of professors of mathematics and science, and shall not be restricted to members of the current faculty of the host institution. Each faculty member shall be chosen for his or her excellence in mathematics, science, or teaching ability. Notwithstanding any other provision of law, the faculty shall not be subject to credentialing requirements or any other restrictions upon eligibility for employment generally applicable to public school instructors, except for the requirement of obtaining a certificate of clearance from the Commission on Teacher Credentialing pursuant to Sections 44332.5, 44339, 44340, and 44341.

(c) The members of the faculty shall be paid on a contractual basis and shall not be considered as state employees.

8668. (a) The site for the California State Summer School for Mathematics and Science shall be chosen for one year, or on a multiyear basis as determined by the State Board of Education based on the cost effectiveness of the proposals submitted to the board through a competitive request for proposal procedure. The criteria for selection shall include, but not necessarily be limited to, all of the following:

(1) Space requirements of the summer school, including residential space and appropriate facilities for all disciplines offered by the summer school.

(2) Technical, administrative, and support services available to the summer school, submitted with an appropriate budget

designating donated services and the costs to the summer school of having other services provided.

(3) Materials, supplies, and equipment available for the exclusive use of the summer school. Materials or equipment that may be used by the host institution during its regular sessions either shall be purchased by the host institution, which may charge the summer school a rental fee for the use of the materials or equipment, or purchased by the summer school, which shall charge the host institution a rental fee for the use of the materials or equipment during the institution's regular sessions.

(4) Operating funds and in-kind services.

(b) Private institutions, colleges, and universities, appropriate privately owned and operated facilities, and state facilities, including, but not limited to, facilities of the California State University and the University of California with the consent of the Board of Regents of the University of California, may be used as the site for the summer school. A regional consortium of campuses and adjacent cultural centers operated by nonprofit organizations may be considered as a single site in the selection process.

8669. (a) It is the intent of the Legislature that at least 50 percent, but not more than 75 percent, of the actual costs of the California State Summer School for Mathematics and Science for each fiscal year would be financed by state funds beginning in the 1999–2000 fiscal year. The balance of the operating costs would be financed with fees and private support.

(b) Except as provided in subdivision (c), the State Board of Education shall set a tuition fee within a range that corresponds to actual program costs, up to but not exceeding one thousand dollars ($1,000) per session in the year 2000. The amount of this fee may be increased by the State Board of Education up to a 5 percent increase each year thereafter. The State Board of Education shall award full or partial scholarships on the basis of need and ability. Pupils who are unable to pay all or part of the fee may petition the State Board of Education for a fee reduction or waiver. The State Board of Education shall adopt rules and regulations regarding fee reduction and waivers, which shall ensure that both of the following occur:

(1) That scholarship funds are available and no talented applicant shall be denied admission solely because of inability to pay all or part of the fee.

(2) That any public announcement regarding the summer school program include notification that full scholarships are available, and information regarding the procedure for applying for a scholarship award.

(c) For pupils who are not California residents, the State Board of Education annually shall set a tuition fee that is not less than the total actual costs to the summer school of services per pupil. The total actual costs of services per pupil shall be computed each year for this

purpose by dividing the amount of school expenditures for the prior fiscal year by the total pupil population for the prior year.

(d) The Foundation for the California State Summer School for Mathematics and Science established pursuant to subdivision (f) of Section 8664 may raise funds from the private sector that may be used by the summer school for general program operating costs, scholarships, program augmentation, public relations, recruitment activity, or special projects. Private support may include, but not be limited to, direct grants to the summer school from private corporations or foundations, individual contributions, in-kind contributions, or fundraising benefits conducted by any entity.

8669.1. By January 1, 2003, the California Research Bureau of the California State Library shall conduct an evaluation on the effectiveness of the California State Summer School for Mathematics and Science.

8669.2. This chapter 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. 2. (a) The sum of one million dollars ($1,000,000) is hereby appropriated from the General Fund, in augmentation of schedule (e) of Item 6110-001-0001 of Section 2.00 of Chapter 324 of the Statutes of 1998. Of this amount, four hundred thousand dollars ($400,000) shall be for support of the State Board of Education for the administrative planning and startup costs of the California State Summer School for Mathematics and Science, and six hundred thousand dollars ($600,000) shall be for the initial costs of operating the summer school program.

(b) Any funds appropriated by subdivision (a) that are unencumbered as of June 30, 1999, may be deposited in the endowment fund established pursuant to subdivision (g) of Section 8664 of the Education Code.

CHAPTER 806

An act to add Chapter 2.3 (commencing with Section 26567.1) to Division 17 of the Public Resources Code, relating to geologic hazard abatement districts.

[Approved by Governor September 23, 1998. Filed with Secretary of State September 24, 1998.]

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

SECTION 1. Chapter 2.3 (commencing with Section 26567.1) is added to Division 17 of the Public Resources Code, to read:

CHAPTER 2.3. DISTRICT DISSOLUTION

26567.1. (a) The legislative body may, by resolution, order the dissolution of a district formed under this division. Any resolution ordering a dissolution is valid only if the legislative body, based on substantial evidence on the record, makes one or more of the following findings:

(1) The corporate powers have not been used, there is a reasonable probability that those powers will not be used in the future, and the district holds no significant liquid assets.

(2) The board of directors, by resolution passed by unanimous vote of the directors, or by a vote of the owners of more than 50 percent of the assessed valuation of the real property in the district, approved the dissolution of the district.

(3) The district has not levied or collected any assessments and holds no significant liquid assets.

(4) The district has not substantially complied with a material condition of the resolution of formation adopted by the legislative body.

(b) If the board of directors is comprised of members of the legislative body, the decision of the board to dissolve a district shall be approved by the owners of more than 50 percent of the assessed valuation of the real property in the district within 90 days after a valid resolution ordering dissolution.

(c) A legislative body or a board of directors shall adopt a resolution setting a public hearing on the proposed dissolution and directing that notice shall be sent to the last known address of each homeowner within the district. The notice shall include the date, time, and place of the hearing and include a copy of the proposed resolution ordering dissolution. The notice shall be mailed first-class, postage prepaid, in the United States mail and be postmarked no later than 30 days prior to the date of the hearing. The notice shall also set forth the address where written objections to the dissolution of the district may be mailed or otherwise delivered up to and including the time of the hearing.

26567.2. In dissolution proceedings, the legislative body may dispense with the resolution and plan of control required by Sections 26553, 26558, and 26562. After the dissolution of the district, the legislative body shall assume all remaining responsibilities and obligations of the district.

26567.3. Within 90 days after a dissolution, the board of directors shall return any liquid assets of the district to the landowners and local agencies in the same proportion that they have contributed to the revenue of the district, and shall provide by resolution for the distribution for ownership of any capital improvements and assets of the district. Within 90 days of a valid resolution ordering dissolution, any property owner within the district may offer an alternative plan for the distribution for ownership of any capital improvements and

real assets of the district which shall be adopted if approved by the owners of more than 50 percent of the assessed valuation of the real property in the district.

CHAPTER 807

An act to add Section 44259.3 to the Education Code, relating to teachers.

[Approved by Governor September 23, 1998. Filed with Secretary of State September 24, 1998.]

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

SECTION 1. Section 44259.3 is added to the Education Code, to read:

44259.3. The commission shall review the minimum requirements set forth in Section 44259 for the preliminary and professional multiple subject teaching credential and shall recommend their revision as necessary, during the normal revision cycles, to ensure that teachers of the elementary grades receive training related to and have knowledge of developmentally appropriate teaching methods for pupils in kindergarten and grades 1 to 3, inclusive, who may be of the same grade level but of vastly different developmental levels. As part of its review, the commission shall ensure that the requirements link academic theory regarding child development to instructional methods designed for use in classrooms of young pupils of varying development levels. These instructional methods should be designed to ensure success and progress by all pupils and should especially help teachers ensure that children who enter school less prepared or with fewer skills than their classmates meet the expected performance standards for that grade by the end of the instructional year. At the conclusion of its review, the commission shall report to the Legislature on its recommended revisions, on or before January 1, 2001.

CHAPTER 808

An act to add Sections 53310 and 53315 to, and to repeal Chapter 4 (commencing with Section 53250) of Part 4 of Division 31 of, the Health and Safety Code, relating to housing.

[Approved by Governor September 23, 1998. Filed with Secretary of State September 24, 1998.]

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

SECTION 1. Section 53310 is added to the Health and Safety Code, to read:

53310. The implementation of this chapter is contingent upon the appropriation of funds in the annual Budget Act for that purpose.

SEC. 2. Section 53315 is added to the Health and Safety Code, to read:

53315. This chapter 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 Assembly Bill 2780 of the 1997–98 Regular Session of the Legislature is chaptered.

CHAPTER 809

An act to add Section 33133 to the Education Code, relating to schoolsite advisory bodies.

[Approved by Governor September 23, 1998. Filed with Secretary of State September 24, 1998.]

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

SECTION 1. Section 33133 is added to the Education Code, to read:

33133. (a) The Superintendent of Public Instruction shall develop information, and submit this information to the State Board of Education for its approval. This information shall be for distribution to school districts and, to the extent feasible, for posting on the State Department of Education Internet website, to strengthen and promote the opportunity for quality involvement by parents and guardians in schoolsite councils whose composition meets the requirements of Section 52012. In developing the information, the Superintendent of Public Instruction may use documents currently available from nonprofit organizations, such as Ed Source and the California Parent Teacher Association, or state and local government agencies.

(b) The information shall be provided to each school district and county office of education and may be made available for parents and guardians who are members of schoolsite councils whose composition meets the requirements of Section 52012 and shall cover at least the following topics:

(1) Operation of schoolsite advisory bodies, including bylaws, group responsibilities, and roles.

(2) Public meeting notice requirements.

(3) Information about the total budget of a school district and how funds are distributed to schoolsite advisory bodies, including, but not limited to, the amount of funds distributed to schoolsites.

(4) Information about the school district and state standards of expected pupil achievement in core academic subjects for each grade level.

(5) Instruction on how to interpret data from the pupil performance measures selected by the school district.

(6) A definition of "significant gains made by pupils" toward meeting the standards of expected pupil achievement.

(7) Research-based information about curriculum and teaching strategies that will improve pupil performance.

(8) The right to information under the Public Records Act set forth in Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

(9) Information regarding the educational and training needs for pupils, as identified and expressed by local employers, former pupils of the school district, and postsecondary education institutions.

(c) In addition to the composition set forth in Section 52012, a schoolsite council at the middle school level may, but is not required to, include pupil representation.

CHAPTER 810

An act to amend Section 52488 of, and to add and repeal Article 9.5 (commencing with Section 52495) to Chapter 9 of Part 28 of, the Education Code, relating to an education incentive program.

[Approved by Governor September 23, 1998. Filed with Secretary of State September 24, 1998.]

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

SECTION 1. Section 52488 of the Education Code is amended to read:

52488. (a) The Superintendent of Public Instruction shall establish on July 1, 1997, and convene the Home Economics Careers and Technology Advisory Committee. The committee shall develop recommendations for state programs in home economics careers and technology education for presentation to the Legislature for review and to the State Board of Education to be used in the development and adoption pursuant to Section 52486 of the rules and regulations necessary to implement the provisions of this article. Recommendations shall include, but not be limited to, the development of a curriculum and a strategy for the purpose of establishing a source of trained and qualified instructors for home economics careers and technology programs throughout the public

school system, and a public information outreach strategy regarding the importance of consumer home economics education and home-economics-related occupations in California. Members of the advisory committee shall serve without compensation, including travel and per diem. The advisory committee shall cease to exist on January 1, 2000.

(b) The committee shall be representative of consumer home economics education and home-economics-related occupation specialists and representatives of the various fields and industries in California described in Section 52485. Nominations for the committee shall be solicited from the various task forces that have assisted in the development of curriculum standards for home economics careers and technology vocational education programs.

(c) The committee shall be composed of the following:

(1) A voluntary representative from a university conducting a teacher education program in home economics careers and technology.

(2) A voluntary representative from a community college conducting a program in home economics careers and technology education.

(3) A voluntary representative from a high school conducting a consumer home economics program in home economics careers and technology.

(4) A voluntary representative from a high school conducting a home-economics-related occupations program in home economics careers and technology.

(5) A voluntary representative from a middle level school conducting an exploratory program in home economics careers and technology.

(6) A former student of a home economics careers and technology education program.

(7) A parent of a student enrolled in home economics careers and technology education.

(8) Eight other individuals representing diverse industries related to established career paths in home economics careers and technology education from various geographic locations in the state.

The State Supervisor of the Home Economics Careers and Technology Vocational Education Unit shall serve as the committee consultant.

SEC. 2. Article 9.5 (commencing with Section 52495) is added to Chapter 9 of Part 28 of the Education Code, to read:

Article 9.5. Home Economics Careers and Technology Vocational Education Incentive Program

52495. An incentive grant program shall be established for the purpose of improving, expanding, and establishing instructional programs in home economics careers and technology vocational

education to improve the academic achievement and career preparation of students in those fields.

52496. This program shall be implemented to the extent funds are appropriated for these purposes in the annual Budget Act.

52497. The governing board of a school district that operates a home economics careers and technology vocational education program may apply to the Superintendent of Public Instruction for an incentive grant pursuant to this article.

52498. The Superintendent of Public Instruction shall award two-year grants of an amount to be determined by the Superintendent of Public Instruction, on a competitive basis, to applicant school districts that meet the following requirements:

(a) The school district shall demonstrate that the home economics careers and technology vocational education program for which grant funds are sought meets specified criteria developed by the Superintendent of Public Instruction.

(b) The participating school district shall contribute an amount of funds equal to the amount of its grant for use in improving, expanding, and establishing instructional programs in home economics careers and technology vocational education.

(c) The school district shall certify to the Superintendent of Public Instruction that the grant funds received and the matching funds contributed by the school district will be used solely for the purposes described in this article.

(d) The school district shall, evaluate the program funded with a grant pursuant to this article according to outcome indicators determined by the Superintendent of Public Instruction

52499. For the purposes of this article, home economics careers and technology vocational education programs means the purchase of instructional resources and equipment appropriate for the instructional program, professional development activities for home economics careers and technology vocational education teachers and members of interdisciplinary teams working to implement selected career paths in home economics careers and technology vocational education, and student development activities.

52499.3. Notwithstanding any other provision of law, any requirement of this article that requires school districts to contribute local matching funds to be eligible for state funds for nonsalary costs of home economics careers and technology vocational education incentive programs may be waived by the Superintendent of Public Instruction if he or she finds that a matching requirement would create a financial hardship for any school district.

52499.5. The State Board of Education may, with the advice of the Superintendent of Public Instruction, adopt rules and regulations governing the distribution of funds for purposes of this article and shall adopt criteria for assessing whether school districts have met the requirements of Section 52498.

52499.6. This article shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

CHAPTER 811

An act to amend Sections 49520 and 49521 of, and to add Sections 49501.3 , 49501.5, and 49524 to, the Public Resources Code, relating to solid waste, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1998. Filed with Secretary of State September 24, 1998.]

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

SECTION 1. The Legislature finds and declares that the addition of Sections 49501.3 and 49501.5 to the Public Resources Code, which define the terms "lawfully provided" and "license" for purposes of laws regulating solid waste enterprises, and the changes to Sections 49520 and 49521 of the Public Resources Code that are made by this act do not constitute changes in, but are declaratory of, existing law.

SEC. 2. Section 49501.3 is added to the Public Resources Code, to read:

49501.3. "Lawfully provided" means the services of the solid waste enterprise are in substantial compliance with the terms and conditions of its franchise, contract, license, or permit.

SEC. 3. Section 49501.5 is added to the Public Resources Code, to read:

49501.5. "License" means a solid waste license issued by a local agency or a business license issued by a local agency if the local agency has not established any other form of authorization for the lawful provision of solid waste handling services.

SEC. 4. Section 49520 of the Public Resources Code is amended to read:

49520. If a local agency has authorized, by franchise, contract, license, or permit, a solid waste enterprise to provide solid waste handling services and those services have been lawfully provided for more than three previous years, the solid waste enterprise may continue to provide those services up to five years after mailed notification to the solid waste enterprise by the local agency having jurisdiction that exclusive solid waste handling services are to be provided or authorized, unless the solid waste enterprise has an exclusive franchise or contract.

If the solid waste enterprise has an exclusive franchise or contract, the solid waste enterprise shall continue to provide those services and

shall be limited to the unexpired term of the contract or franchise or five years, whichever is less.

SEC. 5. Section 49521 of the Public Resources Code is amended to read:

49521. A solid waste enterprise providing continuation solid waste handling services pursuant to Section 49520 is subject to the following conditions:

(a) The services of the solid waste enterprise shall be in substantial compliance with the terms and conditions of the franchise, contract, license, or permit, and meet the quality and frequency of services required by the local agency in other areas not served by the solid waste enterprise.

(b) If the local agency has established rates for solid waste handling services, the solid waste enterprise may be required by the local agency to adhere to rates that are comparable to those established by the local agency.

SEC. 6. Section 49524 is added to the Public Resources Code, to read:

49524. Notwithstanding Section 49523, a solid waste enterprise may not waive the right to continue to provide solid waste handling services as provided in this chapter.

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

In order to clarify provisions of existing law that provide for the continuation of rights to solid waste licensees, thereby preventing the premature termination of the right to do business by those licensees in communities that are converting to exclusive solid waste franchising systems in this state, at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 812

An act to amend Section 8.2 of the County Water Authority Act (Chapter 545 of the Statutes of 1943), relating to water.

[Approved by Governor September 24, 1998. Filed with Secretary of State September 25, 1998.]

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

SECTION 1. Section 8.2 of the County Water Authority Act (Chapter 545 of the Statutes of 1943) is amended to read:

Sec. 8.2. (a) Any authority may, pursuant to this section, borrow money and incur indebtedness for any of the purposes for which it is authorized by law to spend money. The indebtedness shall be

evidenced by short-term revenue certificates issued in the manner and subject to the limitations set forth in this section. Any authority may also borrow money and incur indebtedness to pay the principal or interest on certificates issued pursuant to this section.

(b) Certificates issued by any authority pursuant to this section may be negotiable or nonnegotiable, and all certificates shall be, and shall recite upon their face that they are, payable both as to principal and interest out of any revenues of the authority which are made security for the certificates pursuant to an indenture or resolution duly adopted by the board of directors. The word "revenues," as used in this section, refers to any revenues derived from the sale of water and power, annexation charges (whether collected through tax levies or otherwise), grants, available tax revenues, or any other legally available funds. In no event shall any resolution or indenture preclude payment from the proceeds of sale of other certificates issued pursuant to this section or from amounts drawn on a bank, or other financial institution, lines of credit pursuant to subdivision (e), or from any other lawfully available source of funds.

(c) To exercise the power to borrow money pursuant to this section, the board shall adopt a resolution, or approve an indenture, authorizing the sale and issuance of certificates for that purpose, which resolution or indenture shall specify all of the following:

(1) The purpose or purposes for which the proposed certificates are to be issued.

(2) The maximum principal amount of the certificates which may be outstanding at any one time.

(3) The maximum interest cost, to be determined in the manner specified in the resolution, to be incurred through the issuance of the certificates.

(4) The maximum maturities of the certificates, which shall not exceed 270 days from the date of issue.

(5) The obligations to certificate holders while the certificates are outstanding.

(d) The board may also provide, in its discretion, for any of the following.

(1) The times of sale and issuance of the certificates, the manner of sale and issuance (either through public or private sale), the amounts of the certificates, the maturities of the certificates, the rate of interest, the rate or discount from par, and any other terms and conditions deemed appropriate by the board or by the general manager of the authority or any other officer designated by the board.

(2) The appointment of one or more banks or trust companies, either inside or outside the state, as depository for safekeeping and as agent for the delivery, and the payment, of the certificates.

(3) The employment of one or more persons or firms to assist the authority in the sale of the certificates, whether as sales agents, dealer managers, or in some other comparable capacity.

(4) The refunding of the certificates without further action by the board, unless and until the board specifically revokes that authority to refund.

(5) Other terms and conditions the board determines to be appropriate.

(e) The board may arrange for a bank, or other financial institution, line or letter of credit for (1) the purpose of providing an additional source of repayment for indebtedness incurred under this section and any interest thereon or (2) for the purpose of borrowing for any purpose for which short-term revenue certificates could be issued under this section. Amounts drawn on a line or letter of credit may be evidenced by negotiable or nonnegotiable promissory notes or other evidences of indebtedness. The board is authorized to use any of the provisions of this section in connection with the entering into of the line or letter of credit, borrowing thereunder, or repaying of the borrowings.

CHAPTER 813

An act to add Chapter 7 (commencing with Section 12560) to Part 5 of Division 6 of the Water Code, relating to the Colorado River Management Program.

[Approved by Governor September 24, 1998. Filed with Secretary of State September 25, 1998.]

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

SECTION 1. Chapter 7 (commencing with Section 12560) is added to Part 5 of Division 6 of the Water Code, to read:

CHAPTER 7. COLORADO RIVER MANAGEMENT PROGRAM

12560. Unless the context otherwise requires, the definitions set forth in this section govern the construction of this chapter:

(a) "Account" means the Colorado River Management Account created pursuant to Section 12561.

(b) "California Plan" means the plan being developed by the Colorado River Board of California, the public agencies represented on that board, and the director to ensure that California can live within the state's apportionment of Colorado River water.

12561. There is hereby created the Colorado River Management Account in the General Fund. Notwithstanding Section 13340 of the Government Code, the sum of two hundred thirty-five million dollars ($235,000,000) is hereby continuously appropriated from the General Fund to the account, without regard to fiscal years, for use in accordance with this chapter.

12562. (a) (1) In furtherance of implementing and achieving the goals of the "California Plan," the sum of two hundred million dollars ($200,000,000) in the account shall be used by the director to finance and arrange for lining portions of the All American Canal and the Coachella Branch of the All American Canal.

(2) The canal lining projects shall be completed not later than December 31, 2006, or such later date as may be required by extraordinary circumstances.

(3) The allocation of the water conserved from the canal lining projects and to be made available to the Metropolitan Water District of Southern California shall be consistent with federal law and shall be determined by an agreement among the Metropolitan Water District of Southern California, the Imperial Irrigation District, the Palo Verde Irrigation District, the Coachella Valley Water District, and the San Luis Rey settlement parties, reached after consultation with the director and the United States Secretary of the Interior.

(b) (1) The sum of thirty-five million dollars ($35,000,000) from the account shall be used by the director to finance the installation of recharge, extraction, and distribution facilities for groundwater conjunctive use programs necessary to implement the "California Plan."

(2) Water stored in connection with the groundwater conjunctive use programs described in paragraph (1) shall be for the benefit of the member public agencies of the Metropolitan Water District of Southern California.

(3) Nothing in this subdivision limits the ability of the Metropolitan Water District of Southern California to enter into agreements regarding the sharing of any water made available under this subdivision.

12563. If the contingencies for a transfer to the San Diego County Water Authority of the conserved water under the water transfer agreement entered into by the Imperial Irrigation District and the San Diego County Water Authority on April 29, 1998, have not been satisfied in full prior to December 31, 2006, any recipient of the water made available under the agreement described in subdivision (a) of Section 12562, other than the San Luis Rey settlement parties, shall pay to the state, if required by statute, a portion of the funding made available under subdivision (a) of Section 12562, in an amount to be determined by the statute.

12564. Nothing in the contract anticipated by the memorandum of understanding entered into on August 12, 1998, by the Metropolitan Water District of Southern California and the San Diego County Water Authority shall affect the authority of the Legislature to allocate, by statute, or reallocate water if the contingencies for a transfer of the conserved water to the San Diego County Water Authority under the water transfer agreement entered into by the Imperial Irrigation District and the San Diego

County Water Authority on April 29, 1998, have not been satisfied in full prior to December 31, 2006.

12565. The two hundred million dollars ($200,000,000) made available to the director pursuant to subdivision (a) of Section 12562 may be expended solely for the lining of the All American Canal and the Coachella Branch of the All American Canal and only if all of the following requirements have been met:

(a) The Salton Sea Authority commissions a study of seepage and subsurface inflows to the Salton Sea from the All American Canal and the Coachella Branch of the All American Canal, and that study is completed. The study shall determine the nature of subsurface and drainage canal water movements from the unlined canals to the Salton Sea and to existing adjacent wetlands, and shall quantify the amount of water that may be lost to the Salton Sea and to those wetlands due to the canal lining projects. The Salton Sea Science Subcommittee shall review the requests for proposals for the study and shall be consulted in selecting the contractor responsible for conducting the study.

(b) Environmental documentation and permits required by the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), the National Environmental Policy Act of 1969 (42 U.S.C.A. Sec. 4321 et seq.), and any other applicable state and federal environmental laws are approved and certified for the All American Canal Lining Project or the Coachella Branch Lining Project.

(c) Pursuant to its responsibilities as a trustee agency under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), the Director of Fish and Game makes a finding that a canal lining project that is the subject of a request for funding pursuant to this chapter will avoid or mitigate all significant effects of the project on fisheries and other wildlife. The finding shall be accompanied by a statement from the United States Secretary of the Interior certifying that measures for the replacement of incidental fish and wildlife values adjacent to the All American Canal and the Coachella Branch of the All American Canal foregone as a result of the lining of the canal, or the mitigation of resulting impacts on fish and wildlife resources from the construction of a new canal, or a portion thereof, meet the statutory requirements of Section 203(a)(2) of Public Law 100-675. These mitigation measures shall be on an acre-for-acre basis, based on ecological equivalency, and shall be implemented concurrent with the construction of the canal lining project.

SEC. 2. The sum of three hundred thousand dollars ($300,000) is hereby appropriated from the General Fund to the Salton Sea Authority for the purpose of conducting the study required by subdivision (a) of Section 12565 of the Water Code.

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CHAPTER 814

An act to amend and repeal Section 62.9 of the Labor Code, relating to occupational safety and health.

[Approved by Governor September 24, 1998. Filed with Secretary of State September 25, 1998.]

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

SECTION 1. Section 62.9 of the Labor Code is amended to read:

62.9. (a) The director shall levy and collect assessments from employers in accordance with this section. The total amount of the assessment collected shall be the amount determined by the director to be necessary to produce the revenue sufficient to fund the programs specified by Section 62.7, except that the amount assessed in any year for those purposes shall not exceed 50 percent of the amounts appropriated from the General Fund for the support of the occupational safety and health program for the 1993–94 fiscal year, adjusted for inflation. The director also shall include in the total assessment amount the department's costs for administering the assessment, including the collections process and the cost of reimbursing the Franchise Tax Board for its cost of collection activities pursuant to subdivision (c). The insured employers and private sector self-insured employers that, pursuant to subdivision (b), are subject to assessment shall be assessed, respectively, on the basis of their annual payroll subject to premium charges or their annual payroll that would be subject to premium charges if the employer were insured, as follows:

(A) An employer with a payroll of less than two hundred fifty thousand dollars ($250,000) shall be assessed one hundred dollars ($100).

(B) An employer with a payroll of two hundred fifty thousand dollars ($250,000) or more, but not more than five hundred thousand dollars ($500,000), shall be assessed two hundred dollars ($200).

(C) An employer with a payroll of more than five hundred thousand dollars ($500,000), but not more than seven hundred fifty thousand dollars ($750,000), shall be assessed four hundred dollars ($400).

(D) An employer with a payroll of more than seven hundred fifty thousand dollars ($750,000), but not more than one million dollars ($1,000,000), shall be assessed six hundred dollars ($600).

(E) An employer with a payroll of more than one million dollars ($1,000,000), but not more than one million five hundred thousand dollars ($1,500,000), shall be assessed eight hundred dollars ($800).

(F) An employer with a payroll of more than one million five hundred thousand dollars ($1,500,000), but not more than two million dollars ($2,000,000), shall be assessed one thousand dollars ($1,000).

(G) An employer with a payroll of more than two million dollars ($2,000,000), but not more than two million five hundred thousand dollars ($2,500,000), shall be assessed one thousand five hundred dollars ($1,500).

(H) An employer with a payroll of more than two million five hundred thousand dollars ($2,500,000), but not more than three million five hundred thousand dollars ($3,500,000), shall be assessed two thousand dollars ($2,000).

(I) An employer with a payroll of more than three million five hundred thousand dollars ($3,500,000) shall be assessed two thousand five hundred dollars ($2,500).

(b) (1) In the manner as specified by this section, the director shall identify those insured employers having a workers' compensation experience modification rating of 1.25 or more, and private sector self-insured employers having an equivalent experience modification rating of 1.25 or more as determined pursuant to subdivision (e).

(2) The assessment required by this section shall be levied annually, on a calendar year basis, on those insured employers and private sector self-insured employers, as identified pursuant to paragraph (1), having the highest workers' compensation experience modification ratings or equivalent experience modification ratings, that the director determines to be required numerically to produce the total amount of the assessment to be collected pursuant to subdivision (a).

(c) The director shall collect the assessment from insured employers as follows:

(1) Upon the request of the director, the Department of Insurance shall direct the licensed rating organization designated as the department's statistical agent to provide to the director, for purposes of subdivision (b), a list of all insured employers having a workers' compensation experience rating modification of 1.25 or more, according to the organization's records at the time the list is requested, for policies incepting the year preceding the year in which the assessment is to be collected.

(2) The director shall determine the annual payroll of each insured employer subject to assessment from the payroll that was reported to the licensed rating organization identified in paragraph (1) for the most recent period for which one full year of payroll information is available for all insured employers.

(3) On or before September 1 of each year, the director shall determine each of the current insured employers subject to assessment, and the amount of the total assessment for which each insured employer is liable. The director immediately shall notify each insured employer, in a format chosen by the insurer, of the insured's obligation to submit payment of the assessment to the director within 30 days after the date the billing was mailed, and warn the insured

of the penalties for failure to make timely and full payment as provided by this subdivision.

(4) The director shall identify any insured employers that, within 30 days after the mailing of the billing notice, fail to pay, or object to, their assessments. The director shall mail to each of these employers a notice of delinquency and a notice of the intention to assess penalties, advising that, if the assessment is not paid in full within 15 days after the mailing of the notices, the director will levy against the employer a penalty equal to 25 percent of the employer's assessment, and will refer the assessment and penalty to the Franchise Tax Board for collection. The notices required by this paragraph shall be sent by United States first-class mail.

(5) If an assessment is not paid by an insured employer within 15 days after the mailing of the notices required by paragraph (4), the director shall refer the delinquent assessment and the penalty to the Franchise Tax Board for collection pursuant to Section 19290.1 of the Revenue and Taxation Code.

(d) The director shall collect the assessment directly from private sector self-insured employers. The failure of any private sector self-insured employer to pay the assessment as billed constitutes grounds for the suspension or termination of the employer's certificate to self-insure.

(e) The director shall adopt regulations implementing this section that include provision for a method of determining experience modification ratings for private sector self-insured employers that is generally equivalent to the modification ratings that apply to insured employers and is weighted by both severity and frequency.

(f) The director shall determine whether the amount collected pursuant to any assessment exceeds expenditures, as described in subdivision (a), for the current year and shall credit the amount of any excess to any deficiency in the prior year's assessment or, if there is no deficiency, against the assessment for the subsequent year.

(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.

CHAPTER 815

An act to amend Section 30177 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 24, 1998. Filed with Secretary of State September 25, 1998.]

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

SECTION 1. Section 30177 of the Revenue and Taxation Code is amended to read:

30177. The board shall, pursuant to regulations prescribed by it, refund or credit to a distributor the denominated values, less the discount given on their purchase, of stamps or meter impressions affixed to packages of cigarettes, and the tax imposed on tobacco products that has been paid on the distribution of tobacco products, which have prior to distribution become unfit for use, unsalable or have been destroyed, or which after distribution have become unfit for use or unsalable and have been returned for credit or have been replaced, and the board has proof of that return or destruction.

SEC. 2. The Legislature finds and declares that the amendment to Section 30177 of the Revenue and Taxation Code, proposed by this act, is consistent with the purposes expressed in Article 2 (commencing with Section 30121) of Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code, as contained within the Tobacco Tax and Health Protection Act of 1988 (Proposition 99).

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 816

An act to amend Section 389 of, and to repeal Section 3129 of, the Public Utilities Code, relating to public utilities.

[Approved by Governor September 24, 1998. Filed with Secretary of State September 25, 1998.]

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

SECTION 1. Section 389 of the Public Utilities Code is amended to read:

389. (a) The Secretary of the California Environmental Protection Agency, in consultation with interested stakeholders including relevant state and federal agencies, boards, and commissions, shall evaluate and recommend to the Legislature public policy strategies that address the feasibility of shifting costs from electric utility ratepayers, in whole or in part, to other classes of beneficiaries. This evaluation also shall address the quantification of benefits attributable to the solid-fuel biomass industry and implementation requirements, including statutory amendments and transition period issues that may be relevant, to bring about equitable and effective allocation of solid-fuel biomass electricity costs that ensure the retention of the economic and environmental benefits of the biomass industry while promoting measurable reduction in real

costs to ratepayers. This evaluation shall be in coordination with the California Energy Resources Conservation and Development Commission's efforts pursuant to subdivision (b) of Section 383, addressing renewable policy implementation issues. The Secretary of the California Environmental Protection Agency shall submit a final report to the Legislature, using existing agency resources, prior to March 31, 1997.

(b) The Secretary of the California Environmental Protection Agency, in consultation with relevant state and federal agencies, boards, and commissions, and with representatives of the solid-fuel biomass industry, shall prepare and submit to the Legislature an annual report on the existence, status, and progress of any public policy measures for cost-shifting developed as a result of the recommendations made pursuant to subdivision (a), on or before March 31 of each year from 1999 to 2001, inclusive. A report prepared pursuant to this subdivision shall not exceed 10 pages.

SEC. 2. Section 3129 of the Public Utilities Code is repealed.

CHAPTER 817

An act to amend Sections 12800 and 12803 of, and to repeal and add Section 12806 of, the Government Code, and to amend Section 15037.1 of the Unemployment Insurance Code, relating to human services.

[Approved by Governor September 24, 1998. Filed with Secretary of State September 25, 1998.]

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

SECTION 1. Section 12800 of the Government Code is amended to read:

12800. There are in the state government the following agencies: State and Consumer Services; Business, Transportation and Housing; California Environmental Protection; California Health and Human Services; Resources; Trade and Commerce; and Youth and Adult Correctional.

Whenever the term "Agriculture and Services Agency" appears in any law, it means the "State and Consumer Services Agency," and whenever the term "Secretary of Agriculture and Services Agency" appears in any law, it means the "Secretary of State and Consumer Services Agency."

Whenever the term "Business and Transportation Agency" appears in any law, it means the "Business, Transportation and Housing Agency," and whenever the term "Secretary of the Business and Transportation Agency" appears in any law, it means the "Secretary of the Business, Transportation and Housing Agency."

Whenever the term "Health and Welfare Agency" appears in any law, it means the "California Health and Human Services Agency," and whenever the term "Secretary of the Health and Welfare Agency" appears in any law, it means the "Secretary of the California Health and Human Services Agency."

SEC. 2. Section 12803 of the Government Code is amended to read:

12803. (a) The California Health and Human Services Agency consists of the following departments: Health Services; Mental Health; Developmental Services; Social Services; Alcohol and Drug Abuse; Aging; Employment Development; Rehabilitation; and Community Services and Development.

(b) The agency also includes the Office of Statewide Health Planning and Development and the State Council on Developmental Disabilities.

SEC. 3. Section 12806 of the Government Code is repealed.

SEC. 4. Section 12806 is added to the Government Code, to read:

12806. (a) The California Health and Human Services Agency shall succeed to, and is vested with, all the duties, powers, purposes, responsibilities, and jurisdiction vested in the Health and Welfare Agency.

(b) The Secretary of the California Health and Human Services Agency shall succeed to, and is vested with, all the duties, powers, purposes, responsibilities, and jurisdiction vested in the Secretary of the Health and Welfare Agency.

SEC. 5. Section 15037.1 of the Unemployment Insurance Code is amended to read:

15037.1. (a) The state council shall be responsible for developing an education and job training report card program to assess the accomplishments of California's work force preparation system.

(1) A subcommittee of the state council shall be established for this purpose.

(2) The subcommittee shall be comprised of three private sector members of the state council, the director of the department, the Superintendent of Public Instruction, the Chancellor of the California Community Colleges, or their designees, and representatives of programs that are to be measured under the report card program.

(3) The subcommittee shall be responsible for designing and implementing, or contracting with an operating entity for the implementation of, a system that can compile, maintain, and disseminate information on the performance of providers, programs, and the overall work force preparation system.

(b) By January 1, 2001, the subcommittee or an operating entity under contract to the subcommittee shall operate a comprehensive performance-based accountability system that matches the social security numbers of former participants in state education and training programs with information in files of state and federal

agencies that maintain employment and educational records and identifies the occupations of those former participants whose social security numbers are found in employment records.

(c) This system shall measure the performance of state and federally funded education and training programs. Programs to be measured shall include programs in receipt of funds from the Job Training Partnership Act, the Carl D. Perkins Vocational Education Act, the Job Opportunities and Basic Skills program, the Food Stamp Employment and Training program, the Wagner Peyser Act, the Employment Training Panel, adult education programs as defined by paragraph (9) of subdivision (b) of Section 10521, basic vocational rehabilitation services, as defined by Title 1, Part B of the federal Vocational Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 701 et seq.), vocational education programs, and certificated community college programs.

(d) Job training and education providers receiving funding identified in subdivision (c) shall, to the extent permitted by federal law, request social security numbers from each participant in a work force preparation program and shall report to the subcommittee or an operating entity under contract to the subcommittee, as the case may be, on participant social security numbers and economic and demographic characteristics, including, but not limited to, age, gender, race or ethnicity, and education achievement. The state council shall establish the acceptable format and timeframes for data submission.

(e) The Superintendent of Public Instruction shall ensure that local education agencies that operate programs specified in subdivision (c) issue the following notice to all participants in work force preparation programs:

"PRIVACY NOTICE

Section 15037.1 of the Unemployment Insurance Code, allows job training and education providers to solicit your social security number and other personal information from you to find out if the education or training program you are enrolled in is meeting its goals of preparing individuals for employment.

The information that can be requested includes:

* Your social security number.
* Demographic information (such as your age, ethnicity, and educational achievement level).

* Information about the kinds of services you were provided (such as the type of training received, length of training, and completion dates).

Any information gathered about you will be summed up by the State Job Training Coordinating Council along with the same kinds of information about others to determine the success of the programs you are enrolled in. You will not be individually identified in any reports made to the public.

You may decide whether or not to provide your social security number and other demographic and program information for the purposes identified in this notice. It is voluntary. If you do not wish to provide this information you can still receive services.

If you are under 18, your parent or guardian should sign this form:

_____
Name of participant

My signature means that I have been informed of the ways the social security number and other information will be used and that I have made a voluntary decision to provide the social security number and other information.

_____ _____
Signature of participant (or parent or guardian if participant is under 18) Date

My signature means that I have been informed of the ways the social security number and other information will be used and that I have made a voluntary decision NOT to provide the social security number and other information.

_____ _____
Signature of participant (or parent or guardian if participant is under 18) Date

A copy of the record or information to be released may be requested by the participant by submission of a request in writing."

(f) The Superintendent of Public Instruction may modify the Privacy Notice set forth in subdivision (e) in order to comply with federal privacy law with prior notice to the Assembly Committee on

Labor and Employment and the Senate Committee on Industrial Relations.

(g) The system shall be designed to measure factors such as:

(1) Amount and source of funding.

(2) Program entrance and successful completion rates.

(3) Employment and wage information for one and three years after completion of training.

(4) The relationship of training to employment.

(5) Academic achievement for one and three years after completion of training.

(6) Achievement of industry skill standard certifications, where they exist.

(7) Return on public investment.

(h) Based upon the information compiled pursuant to this section, the subcommittee or an operating entity under contract to the subcommittee, as the case may be, shall, by December 31, 1997, and each December 31 thereafter, do all of the following:

(1) Prepare and disseminate report cards for all training and education providers in receipt of funds included in the tracking system.

(2) Prepare and disseminate local and statewide report cards that measure the outcomes of the individual programs that operate as part of the work force development system.

(3) Prepare and disseminate a state report card that measures the performance of the entire system of work force preparation and the effectiveness of the system in meeting employers' needs for educated and trained workers and the clients' needs for improving their economic well-being.

(i) The state council shall develop objective performance standards emphasizing the principles of continuous improvement for the programs covered under this section, and a system of sanctions and incentives to encourage performance that meet these standards.

(j) The state council shall explore the feasibility of including the following persons in this system:

(1) Attendees at private postsecondary institutions.

(2) Recipients of federal student loans.

(3) Recipients of Pell grants.

(4) Pupils in grades 11 and 12.

(5) Students enrolled in any community college, California State University, or University of California program.

(k) The sole purpose of this section is to assess the performance of state and federal employment and training providers and programs in preparing Californians for the work force. Collection and use of social security numbers pursuant to this section shall be consistent with the requirements of Section 7 of the federal Privacy Act of 1974 (P.L. 93-579) and Section 405(c)(2)(C) of Title 42 of the United States Code. Notwithstanding Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, or any

other provision of law, the social security number of any person obtained pursuant to this section is not a public record, and shall not be disclosed except for the purpose of this section. Information obtained pursuant to this section shall not be sold or distributed to any entity without prior consent from the individual, or his or her parent or guardian, with respect to whom the information is gathered. This subdivision does not prohibit the exchange of information with other governmental departments and agencies, both federal and state, that are concerned with the administration of work force development programs. Neither the subcommittee nor an operating entity under contract to the subcommittee, as the case may be, may make public any information that could identify an individual or his or her employer.

(*l*) An education and training program that requires information gathered by the education and job training report card program shall use the report card program and shall not initiate automated matching of records in duplication of methods already in place as a result of the report card program.

(m) Funding for the development and maintenance of the education and job training report card program shall be made available on a shared basis by the programs the report card program is measuring, to the extent authorized by federal and state law. The subcommittee, or the operating entity under contract to the subcommittee, shall have the authority to assess each of the programs with an appropriate share of the costs of the report card program. Administrative funds currently used for program followup activities for the identified programs shall be redirected for this purpose, if authorized by federal law.

(n) The state council shall apply for any federal waivers that may be necessary to implement this section.

CHAPTER 818

An act to amend Section 18821 of, and to add and repeal Article 14 (commencing with Section 18851) of Chapter 3 of Part 10.2 of Division 2 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 24, 1998. Filed with Secretary of State September 25, 1998.]

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

SECTION 1. Section 18821 of the Revenue and Taxation Code is amended to read:

18821. (a) Any individual may designate on the tax return that a contribution in excess of the tax liability, if any, be made to the California Mexican American Veterans' Memorial Beautification and

Enhancement Account in the General Fund established by Section 1340 of the Military and Veterans Code. That designation is to be used as a voluntary checkoff on the tax return only after the Franchise Tax Board has been notified in writing that construction of the veterans' memorial has commenced. If the Franchise Tax Board has been notified in writing by the Veterans' Memorial Commission at any time during the taxable year that construction has commenced, the California Mexican American Veterans' Memorial Beautification and Enhancement Account shall first appear for contribution on the tax return filed for the taxable year beginning on or after January 1 of that year.

(b) The contributions 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 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 taxpayer's liability, the return shall be treated as though no designation has been made.

(d) In the event a taxpayer designates a contribution to more than one account or fund listed on the tax return, and the amount available is insufficient to satisfy the total amount designated, the contribution shall be allocated among the designees on a pro rata basis.

(e) The Franchise Tax Board shall revise the forms of the return to include a space labeled the "California Mexican American Veterans' Memorial" to allow for the designation permitted under subdivision (a). The forms shall also include in the instructions information that the contribution may be in the amount of one dollar ($1) or more and that the contribution shall be used to beautify and enhance an existing memorial.

(f) A deduction shall be allowed under Article 6 (commencing with Section 17201) of Chapter 3 of Part 10 for any contribution made pursuant to subdivision (a).

SEC. 2. Article 14 (commencing with Section 18851) is added to Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code, to read:

Article 14. Emergency Food Assistance Program Fund

18851. (a) An individual may designate on the tax return that a contribution in excess of the tax liability, if any, be made to the Emergency Food Assistance Program Fund, which is established by Section 18852. That designation is to be used as a voluntary checkoff on the tax return.

(b) The contributions shall be in full dollar amounts and may be made individually by each signatory on a joint return.

(c) A designation shall be made for any taxable year on the initial return for that taxable year and once made is irrevocable. If

payments and credits reported on the return, together with any other credits associated with the taxpayer's account do not exceed the taxpayer's liability, the return shall be treated as though no designation has been made. If no designee is specified, the contribution shall be transferred to the General Fund after reimbursement of the direct actual costs of the Franchise Tax Board for the collection and administration of funds under this article.

(d) If an individual designates a contribution to more than one account or fund listed on the tax return, 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 "Emergency Food Assistance Program Fund" to allow for the designation permitted. The form shall also include in the instructions information that the contribution may be in the amount of one dollar ($1) or more and that the contribution shall be used for the Emergency Food Assistance Program.

(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).

18852. There is in the State Treasury the Emergency Food Assistance Program Fund to receive contributions made pursuant to Section 18851. The Franchise Tax Board shall notify the Controller of both the amount of money paid by taxpayers in excess of their tax liability and the amount of refund money that taxpayers have designated pursuant to Section 18851 to be transferred to the Emergency Food Assistance Program Fund. The Controller shall transfer from the Personal Income Tax Fund to the Emergency Food Assistance Program Fund an amount not in excess of the sum of the amounts designated by individuals pursuant to Section 18851 for payment into that fund.

18853. All money transferred to the Emergency Food Assistance Program Fund, upon appropriation by the Legislature, shall be allocated as follows:

(a) To the Franchise Tax Board and the Controller for reimbursement of all costs incurred by the Franchise Tax Board and the Controller in connection with their duties under this article.

(b) To the State Department of Social Services for allocation to the Emergency Food Assistance Program. Funds shall be allocated for direct services provided by the Emergency Food Assistance Program and may not be used for the department's administrative costs.

18854. It is the intent of the Legislature that this article create an additional funding source for the Emergency Food Assistance Program and shall be used to supplement, not supplant, other funding sources for this program.

18855. (a) This article shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2004, deletes 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 1999, or the adjusted amount specified in subdivision (c) for subsequent taxable years, 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 2000, 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.

CHAPTER 819

An act to amend Section 65588 of the Government Code, relating to local planning.

[Approved by Governor September 24, 1998. Filed with Secretary of State September 25, 1998.]

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

SECTION 1. Section 65588 of the Government Code is amended to read:

65588. (a) Each local government shall review its housing element as frequently as appropriate to evaluate all of the following:

(1) The appropriateness of the housing goals, objectives, and policies in contributing to the attainment of the state housing goal.

(2) The effectiveness of the housing element in attainment of the community's housing goals and objectives.

(3) The progress of the city, county, or city and county in implementation of the housing element.

(b) The housing element shall be revised as appropriate, but not less than every five years, to reflect the results of this periodic review.

In order to facilitate effective review by the department of housing elements, the following local governments shall prepare and adopt the first two revisions of their housing elements no later than the dates specified in the following schedule, notwithstanding the date of adoption of the housing elements in existence on the effective date of the act which amended this section during the 1983–84 Session of the Legislature.

(1) Local governments within the regional jurisdiction of the Southern California Association of Governments: July 1, 1984, for the first revision and July 1, 1989, for the second revision.

(2) Local governments within the regional jurisdiction of the Association of Bay Area Governments: January 1, 1985, for the first revision, and July 1, 1990, for the second revision.

(3) Local governments within the regional jurisdiction of the San Diego Association of Governments, the Council of Fresno County Governments, the Kern County Council of Governments, the Sacramento Area Council of Governments, and the Association of Monterey Bay Area Governments: July 1, 1985, for the first revision, and July 1, 1991, for the second revision.

(4) All other local governments: January 1, 1986, for the first revision, and July 1, 1992, for the second revision.

(5) Subsequent revisions shall be completed not less often than at five-year intervals following the second revision.

(c) The review and revision of housing elements required by this section shall take into account any low- or moderate-income housing provided or required pursuant to Section 65590.

(d) The review pursuant to subdivision (c) shall include, but need not be limited to, the following:

(1) The number of new housing units approved for construction within the coastal zone after January 1, 1982.

(2) The number of housing units for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, required to be provided in new housing developments either within the coastal zone or within three miles of the coastal zone pursuant to Section 65590.

(3) The number of existing residential dwelling units occupied by persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, that have been authorized to be demolished or converted since January 1, 1982, in the coastal zone.

(4) The number of residential dwelling units for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, that have been required for replacement or

authorized to be converted or demolished as identified in paragraph (3). The location of the replacement units, either onsite, elsewhere within the locality's jurisdiction within the coastal zone, or within three miles of the coastal zone within the locality's jurisdiction, shall be designated in the review.

(e) Notwithstanding the requirements of paragraph (5) of subdivision (b), the dates of revisions for the housing element shall be modified upon the effective date of this provision as follows:

(1) Local governments within the regional jurisdiction of the Southern California Association of Governments : June 30, 2000, for the third revision, and June 30, 2005, for the fourth revision.

(2) Local governments within the regional jurisdiction of the Association of Bay Area Governments: June 30, 2001, for the third revision, and June 30, 2006, for the fourth revision.

(3) Local governments within the regional jurisdiction of the Council of Fresno County Governments, the Kern County Council of Governments, the Sacramento Area Council of Governments, and the Association of Monterey Bay Area Governments: June 30, 2002, for the third revision, and June 30, 2007, for the fourth revision.

(4) Local governments within the regional jurisdiction of the San Diego Association of Governments: June 30, 1999, for the third revision, and June 30, 2004, for the fourth revision.

(5) All other local governments: June 30, 2003, for the third revision, and June 30, 2008, for the fourth revision.

(6) Subsequent revisions shall be completed not less often than at five-year intervals following the fourth revision.

CHAPTER 820

An act to amend Section 22822 of, to add Part 7 (commencing with Section 22960) to Division 5 of Title 2 of, to add Sections 3517.61, 19173.4, 19175.7, 21363.5, and 21465 to, and to repeal Article 2.1 (commencing with Section 21078) of Chapter 12 of Part 3 of Division 5 of Title 2 of, the Government Code, relating to state employees, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1998. Filed with Secretary of State September 25, 1998.]

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

SECTION 1. The Legislature finds and declares that the purpose of this act is to adopt an agreement pursuant to Section 3517.5 of the Government Code entered into by the state employer and a recognized employee organization to make necessary statutory changes in health, retirement, salary, and other benefits.

SEC. 2. The provisions of the memoranda of understanding prepared pursuant to Section 3517.5 of the Government Code entered into by the state employer and Unit 6 - California Correctional Peace Officers Association - dated August 22, 1998, and that requires the expenditure of funds, is hereby approved for the purposes of Section 3517.6 of the Government Code.

SEC. 3. Notwithstanding Section 3517.6 of the Government Code, the provisions of any memorandum of understanding that require the expenditure of funds shall become effective even if the provisions of the memorandum of understanding are approved by the Legislature in legislation other than the annual Budget Act.

SEC. 4. The Department of Personnel Administration shall endeavor to maintain appropriate compensation, benefits, and personnel policies under its statutory jurisdiction for supervisory peace officers by considering factors that shall include, but are not limited to, the compensation, benefits, and personnel practices provided to correctional peace officers in state government.

SEC. 5. Section 3517.61 is added to the Government Code, to read:

3517.61. Notwithstanding Section 3517.6, for state employees in State Bargaining Unit 6, in any case where the provisions of Section 70031 of the Education Code, subdivision (i) of Section 3513, or Section 14876, 18714, 19080.5, 19100, 19143, 19173.4, 19175.7, 19261, 19818.16, 19819.1, 19820, 19822, 19824, 19826, 19827, 19828, 19829, 19830, 19831, 19832, 19833, 19834, 19835, 19836, 19837, 19838, 19839, 19840, 19841, 19842, 19843, 19844, 19845, 19846, 19847, 19848, 19849, 19849.1, 19849.4, 19850.1, 19850.2, 19850.3, 19850.4, 19850.5, 19850.6, 19851, 19853, 19854, 19856, 19856.1, 19858.1, 19858.2, 19859, 19860, 19861, 19862, 19862.1, 19863, 19863.1, 19864, 19866, 19869, 19870, 19871, 19871.1, 19872, 19873, 19874, 19875, 19876, 19877, 19877.1, 19878, 19879, 19880, 19880.1, 19881, 19882, 19883, 19884, 19885, 19887, 19887.1, 19887.2, 19888, 19990, 19991, 19991.1, 19991.2, 19991.3, 19991.4, 19991.5, 19991.6, 19991.7, 19992, 19992.1, 19992.2, 19992.3, 19992.4, 19993, 19994.1, 19994.2, 19994.3, 19994.4 19995, 19995.1, 19995.2, 19995.3, 19996.1, 19996.2, 19998, 19998.1, 20796, 21600, 21602, 21604, 21605, 22825, or 22825.1 are in conflict with the provisions of a memorandum of understanding, the memorandum of understanding shall be controlling without further legislative action. In any case where the provisions of Section 19997.2, 19997.3, 19997.8, 19997.9, 19997.10, 19997.11, 19997.12, 19997.13, or 19997.14 are in conflict with the provisions of a memorandum of understanding, the terms of the memorandum of understanding shall be controlling unless the State Personnel Board finds those terms to the inconsistent with merit employment principles as provided for by Article VII of the California Constitution. Where this finding is made, the provisions of the Government Code shall prevail until those affected sections of the memorandum of understanding are renegotiated to resolve the inconsistency. If any provision of the memorandum of understanding

requires the expenditure of funds, those provisions of the memorandum of understanding shall not become effective unless approved by the Legislature in the annual Budget Act. If any provision of the memorandum of understanding requires legislative action to permit its implementation by amendment of any section not cited above, those provisions of the memorandum of understanding shall not become effective unless approved by the Legislature.

SEC. 6. Section 19173.4 is added to the Government Code, to read:

19173.4. (a) Notwithstanding Section 19173, effective January 1, 1999, this section shall only apply to state employees in State Bargaining Unit 6.

(b) Any probationer may be rejected by the appointing power during the probationary period for reasons relating to the probationer's qualifications, the good of the service, or failure to demonstrate merit, efficiency, and fitness.

(c) A rejection during the probationary period is effected by the service upon the probationer of a written notice of rejection which shall include both of the following:

(1) An effective date for the rejection which shall not be later than the last day of the probationary period.

(2) A statement of the reasons for the rejection.

(d) Service of the notice shall be made prior to the effective date of the rejection. Notice of rejection shall be served prior to the conclusion of the prescribed probationary period. The probationary period may be extended when necessary to provide the full notice period required by board rule. Within 15 days after the effective date of the rejection, a copy thereof shall be filed with the board.

SEC. 7. Section 19175.7 is added to the Government Code, to read:

19175.7. (a) Notwithstanding Section 19175, this section shall only apply to state employees in State Bargaining Unit 6.

(b) The board, at the written request of a rejected probationer filed within 15 calendar days of the effective date of rejection, shall only review allegations that the rejection was made for reasons of discrimination as defined for the purposes of subdivision (a) of Section 19702, fraud, political patronage, or for failure to comply with Department of Personnel Administration Rule 599.795. If the board determines that the rejected probationer has stated a prima facie case of discrimination, fraud, political patronage, or failure to comply with Department of Personnel Administration Rule 599.795, the board may investigate the case with or without a hearing and do any one of the following:

(1) Affirm the action of the appointing power.

(2) Modify the action of the appointing power.

(3) Restore the name of the rejected probationer to the employment list for certification to any position within the class, provided that his or her name shall not be certified to the agency by

which he or she was rejected, except with the concurrence of the appointing power thereof.

(4) Restore the rejected probationer to the position from which he or she was rejected, but this shall be done only if the board determines that there is substantial evidence to support that the rejection was made for reasons of discrimination as defined for the purposes of subdivision (a) of Section 19702, fraud, political patronage, or failure to comply with Department of Personnel Administration Rule 599.795. At any such investigation or hearing the rejected probationer shall have the burden of proof, subject to rebuttal by him or her, and it shall be presumed that the rejection was free from discrimination, fraud, political patronage, or failure to comply with Department of Personnel Administration Rule 599.795 and that the statement of reasons therefor in the notice of rejection is true.

SEC. 8. Article 2.1 (commencing with Section 21078) of Chapter 12 of Part 3 of Division 5 of Title 2 of the Government Code is repealed.

SEC. 9. Section 21363.5 is added to the Government Code, to read:

21363.5. Notwithstanding Section 21363, the limitation on the service retirement benefit shall be 85 percent for state peace officer/firefighter members in State Bargaining Unit 6 who retire on and after January 1, 1999. This provision may also be applied to state peace officer/firefighter members in related supervisory or confidential positions, provided the Department of Personnel Administration has approved this inclusion in writing to the board.

SEC. 10. Section 21465 is added to the Government Code, to read:

21465. Optional settlement 5 consists of a partial distribution of the actuarial present value of the member's unmodified monthly allowance, as prescribed in Section 21363 or 21418. The actuarial present value shall be based upon the investment return and postretirement mortality assumptions adopted by the board for that purpose. The member may elect to receive the actuarial present value of no more than 50 percent of his or her unmodified allowance. The member shall elect to receive the remaining portion of the unmodified allowance not distributed as a lump sum for the remainder of his or her lifetime under one of the settlements specified in this article for the remainder of his or her lifetime and thereafter to his or her designated beneficiary. Under no circumstances shall the benefits provided under this section exceed the benefits that would have otherwise been provided under any other section in this article.

This section shall only apply to state peace officer/firefighter members in State Bargaining Unit 6 who retire on and after January 1, 1999, as well as to state peace officer/firefighter members in related supervisory and confidential positions, provided the Department of Personnel Administration has approved their inclusion.

SEC. 11. Part 7 (commencing with Section 22960) is added to Division 5 of Title 2 of the Government Code, to read:

PART 7. STATE PEACE OFFICERS' AND FIREFIGHTERS' DEFINED CONTRIBUTION PLAN

CHAPTER 1. GENERAL PROVISIONS

22960. (a) The State Peace Officers' and Firefighters' Defined Contribution Plan is hereby established for state peace officer and firefighter members in Bargaining Unit 6 who have become subject to this part by memorandum of understanding, as provided by Section 3517.5.

(b) The plan may also be provided to state peace officers or firefighters who are either excluded from the definition of state employee in subdivision (c) of Section 3513, or are nonelected officers or employees of the executive branch of government and are not members of the civil service, and who supervise employees in a bargaining unit that is subject to this part, provided that the Department of Personnel Administration has approved their inclusion for coverage under this part.

22960.1. The State Peace Officers' and Firefighters' Defined Contribution Plan shall supplement the benefits provided under Part 3 (commencing with Section 20000).

22960.2. (a) The State Peace Officers' and Firefighters' Defined Contribution Plan is a qualified money purchase pension plan under Section 401(a) of Title 26 of the United States Code.

(b) The design and administration of the State Peace Officers' and Firefighters' Defined Contribution Plan shall conform with the applicable provisions of Title 26 of the United States Code and the Revenue and Taxation Code.

22960.3. If any provision of this part or application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this part that can be given effect without the invalid provision or application, and to this end the provisions of this part are severable.

CHAPTER 2. DEFINITIONS

22960.10. "Account" means the account maintained with respect to the participant which reflects that aggregate value of the following amounts credited to the participant:

(a) Employee contributions to the plan.

(b) Employer contributions to the plan on behalf of the participant.

(c) Net earnings of the State Peace Officers' and Firefighters' Defined Contribution Plan Fund allocable to the participant.

(d) Any amount credited to the participant's account by reason of a transfer from another qualified plan in accordance with applicable federal tax laws.

22960.11. "Beneficiary" means any person or persons designated by the participant pursuant to this part, or otherwise entitled by statute, to receive distributions from the participant's account upon the death of the participant.

22960.12. "Board" means the Board of Administration of the California Public Employees' Retirement System.

22960.13. "Compensation" means the total amount paid to an employee for a plan year as required to be reported on the employee's Internal Revenue Service form W-2 for income tax withholding purposes. This amount shall include employee contributions picked up by the employer under Section 414(h)(2) of Title 26 of the United States Code; and any amounts deducted by the employer from the participant's salary, including deductions for tax-deferred retirement plans or insurance programs; deductions for participation in an eligible deferred compensation plan within the meaning of Section 457 of Title 26 of the United States Code; and deductions for participation in a plan that meets the requirements of Section 125 or 401(k) of Title 26 of the United States Code.

22960.14. "Disability" means a disability as determined by the board pursuant to Section 21156.

22960.15. "Eligible employee" means any person employed by the state, whose compensation is paid out of funds directly controlled by the state, and who is subject to coverage by the plan pursuant to the provisions of Section 23000.

22960.16. "Employee contribution" means the amount withheld from the participant's compensation by the employer as a contribution to the participant's account in the plan.

22960.17. "Employee contribution rate" means the percentage of the participant's compensation to be withheld by the employer as an employee contribution to the plan.

22960.18. "Employer" means the State of California.

22960.19. "Employer contribution" means the amount contributed by the employer to the participant's account in the plan.

22960.20. "Employer contribution rate" means the percentage of the participant's compensation to be contributed by the employer to the participant's account in the plan.

22960.21. "Fund" means the State Peace Officers' and Firefighters' defined Contribution Plan Fund.

22960.22. "Net earnings" means the income earned, or losses incurred, on the State Peace Officers' and Firefighters' Defined Contribution Plan Fund, less the costs of administering the plan.

22960.23. "Normal retirement age" means the age at which the participant is eligible for a retirement benefit without special qualifications and is the age of 50 years under this plan.

22960.24. "Participant" means an employee who is subject to coverage by the plan, and who has contributions credited under the plan.

22960.25. "Plan" means the State Peace Officers' and Firefighters' Defined Contribution Plan.

22960.26. "Plan year" means the 12-month period commencing on any January 1 and ending on the following December 31.

22960.27. "Retirement" means termination of all employment for the employer and completion of all conditions precedent to receiving a distribution for retirement.

22960.28. "Spouse" means the person married to the participant on the date the participant files a beneficiary designation, or an application for a distribution from the plan, or on the date of the participant's death.

22960.29. "State peace officers and firefighters" means those persons included in the definition of "state peace officer/firefighter member" pursuant to Article 3 (commencing with Section 20390) of Chapter 4 of Part 3.

22960.30. "System" means the Public Employees' Retirement System.

22960.31. "Termination" means termination of employment by reason of separation from all service for the employer.

22960.32. "Valuation date" means the date as of which the assets of the fund are valued.

CHAPTER 3. ADMINISTRATION OF THE PLAN

22960.35. (a) Except as provided in this part, the plan shall be administered by the board in conformity with its powers and duties for administration of the system as set forth in Part 3 (commencing with Section 20000). The board shall, to the extent that it determines feasible, follow the procedures set forth in Article 7 (commencing with Section 20220) of Chapter 2 of Part 3.

(b) The board may retain a third-party administrator to perform recordkeeping, customer service or other plan administration services.

(c) The board shall notify the Department of Personnel Administration when it is prepared to implement the plan.

22960.36. (a) The board shall adopt a trust instrument embodying the material terms and conditions of the plan consistent with this part and the applicable provisions of Title 26 of the United States Code.

(b) The board may, as it deems necessary, amend the plan consistent with this part and the applicable provisions of Title 26 of the United States Code.

(c) The board shall provide reasonable notice to each plan participant of any plan amendment.

22960.37. In administering the plan, the officers and employees of the system shall discharge their duties with respect to the plan solely in the interest of the participants and beneficiaries:

(a) In accordance with the documents and instruments governing the plan insofar as those documents and instruments are consistent with this part.

(b) For the exclusive purpose of both of the following:

(1) Providing benefits to participants and their beneficiaries.

(2) Defraying reasonable expenses of administering the plan.

(c) By investing with the care, skill, prudence, and diligency under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an enterprise of a like character and with like aims.

22960.38. With regard to the plan, the board shall not engage in any transaction prohibited by Section 503(b) of Title 26 of the United States Code.

22960.39. The board may require a third-party administrator, recordkeeper, custodian, or investment manager that is contracted with, or appointed by the system, to be subject to the duties set forth in Section 22960.37.

22960.40. Data filed by any participant or beneficiary with the board is confidential, and no individual record shall be divulged by any official or employee having access to that data to any person other than the participant to whom the information relates or his or her authorized representative, employer, or any state department or agency. The information shall be used by the board for the sole purpose of carrying into effect the provisions of this part. Any information that is requested for retirement purposes by any public agency shall be treated as confidential by the agency.

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

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

CHAPTER 4. THE FUND

22960.45. The State Peace Officers' and Firefighters' Defined Contribution Plan Fund is hereby established as a special trust fund in the State Treasury to accept participant and employer contributions to the plan.

22960.46. The board shall have exclusive control of the investment of the fund.

22960.47. Notwithstanding any other provision of law, the board may retain a bank or trust company to serve as a custodian for safekeeping, recordkeeping, delivery, securities valuation, investment performance reporting, or other services in connection with investment and administration of the fund.

22960.48. Notwithstanding Section 13340, all moneys in the fund are continuously appropriated, without regard to fiscal years or plan years, to the board to carry out the purposes of this part.

22960.49. All costs of the plan shall be charged against the plan participants accounts.

22960.50. The assets of the fund shall be valued annually, and may be valued more frequently as prescribed by the board.

22960.51. No part of the assets of the fund may revert to the employer until all liabilities of the plan have been fully satisfied.

CHAPTER 5. ELIGIBILITY

22960.55. (a) Any person who is an eligible employee on the effective date of the plan, as set forth in the memorandum of understanding, shall become a participant on the effective date of the plan.

(b) Any person who becomes an eligible employee after the effective date of the plan shall become a participant on the first day of covered employment.

CHAPTER 6. CONTRIBUTIONS

22960.60. (a) Employer and employee contribution rates may be determined by the terms of the memorandum of understanding applicable to each plan participant and the employer in accordance with the requirements of this section.

(b) Through the Department of Personnel Administration, the employer shall provide the board with a true and correct copy of each memorandum of understanding applicable to plan participants. The board may prescribe procedures for the orderly transmittal and receipt of these documents.

(c) Except as provided in subdivision (e), after receipt of an applicable memorandum of understanding that sets forth an employer contribution rate and any employee contribution rate, the board shall, in accordance with Section 22960.36, amend the plan to provide for the employer contribution rate and any employee contribution rate set forth in the memorandum of understanding.

(d) The employer contribution rate and any employee contribution rate for state peace officers and firefighters who have become subject to this part pursuant to the provisions of subdivision (b) of Section 22960 shall be the contribution rate or rates set forth in the memorandum of understanding for state peace officers and firefighter members in Bargaining Unit 6.

(e) The board may refuse to amend the plan under this section if, in the board's considered judgment, the proposed amendment would violate any applicable provision of Title 26 of the United States Code.

(f) The initial employer contribution rate shall be prescribed in the memorandum of understanding. In the event an MOU expires and no new memorandums of understanding takes effect, the last memorandums of understanding in place shall control.

22960.61. The employer shall pick up, for the sole purpose of and in accordance with the requirements of Section 414(h)(2) of Title 26 of the United States Code and Section 17501 of the Revenue and Taxation Code, all of the amounts otherwise due as employee contributions, which shall be paid by the employer in lieu of employee contributions and which shall be deducted from the employee's compensation.

22960.62. Pursuant to terms and conditions established by the board, a participant may be permitted to transfer funds from an eligible retirement plan into the plan to the extent that the transfers are allowable under applicable federal and state laws.

22960.63. (a) Notwithstanding any other provision of law or contract to the contrary, contributions to the plan shall be subject to the applicable limitations imposed by Section 415 of Title 26 of the United States Code, as that section may be amended from time to time and as these limits may be adjusted by the Commissioner of Internal Revenue.

(b) Notwithstanding any other provision of law or contract to the contrary, the amount of compensation that is taken into account in determining the benefits payable under the plan shall not exceed the applicable annual compensation limitations prescribed by Section 401(a)(17) of Title 26 of the United State Code, as that section may be amended from time to time and as that limit may be adjusted by the Commissioner of Internal Revenue.

CHAPTER 7. PARTICIPANT ACCOUNTS

22960.65. (a) Any contributions made by the participant to the plan shall be credited to the participant's account.

(b) Contributions made by the employer on behalf of the participant shall be credited to the participant's account.

22960.66. In the case of a contribution that is made under a mistake of fact, nothing in this part shall prohibit the return of that contribution within one year after discovery of the mistake.

22960.67. The net earnings of the fund shall be allocated to the participant's account as of each valuation date in the ratio that the participant's account balance bears to the aggregate of all participants' account balances.

22960.68. The value of each participant's account shall be determined at least once annually in a manner prescribed by the board.

22960.69. A participant shall receive a statement that displays the value, or balance, of the participant's account and summarizes any credits to the account or other transactions that occurred after the immediately preceding valuation date. The statement of account shall be provided at least once annually to each participant.

CHAPTER 8. RIGHTS TO BENEFITS

22960.70. A participant has a vested right to 100 percent of the value of the participant's account. The right accrues when the person becomes a participant.

22960.71. The right of a participant to a benefit is not subject to execution or any other process whatsoever, except to the extent permitted by Section 704.110 of the Code of Civil Procedure, and is unassignable except as specifically provided under this part. Notwithstanding any provision of this part to the contrary, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of Title 26 of the United States Code.

CHAPTER 9. COMMUNITY PROPERTY

22960.75. (a) Upon the legal separation or dissolution of marriage of a participant, the court shall include in the judgment or a court order the date on which the parties separated.

(b) If the community property is divided in accordance with subdivision (c) of Section 2610 of the Family Code, the court shall order that the contributions and earnings attributable to periods of service during the marriage be divided into two separate and distinct accounts in the name of the participant and the name of the nonparticipant spouse, respectively. Any contributions or earnings that are not explicitly awarded by the judgment or court order shall be deemed the exclusive property of the participant.

(c) The court shall address the rights of the nonparticipant spouse to the following:

(1) The right to a retirement benefit, and the consequent right to elect an annuity.

(2) The right to lump-sum distribution of the balance of the nonparticipant spouse's account.

(3) The right to designate a beneficiary to receive a distribution of the balance remaining in the nonparticipant spouse's account upon the death of the nonparticipant spouse.

(d) In the capacity of nonparticipant spouse, he or she is entitled only to the rights and benefits explicitly established by this chapter. The nonparticipant spouse shall not be entitled to a disability benefit.

(e) Nothing in this chapter shall be construed to authorize any amount to be distributed under the plan at a time or in a form that is not permitted under this part or Title 26 of the United States Code.

22960.76. For purposes of this chapter, "nonparticipant spouse" means the spouse or the former spouse of the participant, who as a result of petitioning the court for the division of community property, has been awarded a distinct and separate account. A nonparticipant spouse who is awarded a separate account is not a participant in the plan.

22960.77. (a) The nonparticipant spouse shall have the right to a lump-sum distribution of the amounts credited to his or her account.

(b) The nonparticipant spouse shall file an application for the distribution on a form prescribed by the board.

(c) No partial distribution shall be made from the nonparticipant spouse's account.

(d) The nonparticipant spouse may not cancel the distribution once it has become effective.

(e) The nonparticipant spouse is deemed to have permanently waived all rights to a retirement benefit when the distribution becomes effective.

22960.78. (a) A nonparticipant spouse may apply for a retirement benefit, provided the participant or the nonparticipant spouse has attained the normal retirement age. The retirement benefit is a distribution of the balance of the nonparticipant spouse's account.

(b) Application for a retirement benefit shall be made on an application form prescribed by the board.

(c) The retirement date shall be the date designated in the nonparticipant spouse's application, or the day following the date of the court order dividing the community property of the participant and nonparticipant spouse, if later.

22960.79. A nonparticipant spouse who is entitled to a distribution for retirement that equals or exceeds five thousand dollars ($5,000), may elect to receive the distribution in one of the following forms:

(a) A single lump-sum payment.

(b) Substantially level installment payments for a period of years that extends no longer than the life expectancy of the participant.

(c) A single life annuity.

CHAPTER 10. BENEFICIARY DESIGNATION

22960.80. The participant may designate any person or persons as beneficiaries to receive any amount that may be payable upon the death of the participant pursuant to the provisions of Section 22960.88. The beneficiary or beneficiaries shall be designated on a form prescribed by the board, signed by the participant, and delivered to a plan representative prior to the participant's death.

22960.81. Notwithstanding Section 22960.80, the participant's beneficiary designation shall not be given effect and shall be

overridden to the extent that such a designation would impair the rights of any surviving spouse under applicable federal or state law.

22960.82. Unless otherwise provided in the beneficiary designation form, each designated beneficiary shall be entitled to equal shares of the lump-sum distribution that may be payable from the participant's account upon the death of the participant.

22960.83. In the event the participant dies without a valid beneficiary designation on file, or if no designated beneficiary survives the participant, any balance remaining in the participant's account shall be payable to the participant's estate.

CHAPTER 11. BENEFITS

22960.85. (a) Upon separation from all service for the employer for any reason other than death, disability, or retirement, a participant is entitled to a lump-sum distribution of the balance of his or her account as of the first valuation date immediately following the date of the application.

(b) Application for a distribution for termination of employment shall be made on an application form prescribed by the board. Any participant who is entitled to a distribution that equals or exceeds five thousand dollars ($5,000), may elect on the application form to receive the distribution in one of the following forms:

(1) A single lump-sum payment.

(2) Substantially level installment payments for a period of years that extends no longer than the life expectancy of the participant.

(c) The employer shall certify on a form prescribed by the board that the participant's employment has terminated.

(d) No partial distribution shall be made from the participant's account.

(e) The participant is deemed to have permanently waived all rights to a retirement benefit when the distribution becomes effective.

22960.86. (a) Upon separation from all service for the employer, a participant may apply for a retirement benefit, provided the retirement date is no earlier than the date on which the participant attains the normal retirement age. The retirement benefit is a distribution of the balance of the participant's account as of the first valuation date immediately following the date of the application.

(b) Application for a retirement benefit shall be made on an application form prescribed by the board.

(c) The employer shall certify on a form prescribed by the board that the participant's employment has terminated.

22960.87. (a) A disability benefit shall become payable to a participant only upon the participant's separation from all service for the employer and upon a determination by the board that the participant has a disability pursuant to Section 21156. The disability benefit is a distribution of the balance of the participant's account as

of the first valuation date immediately following the date of the application.

(b) Application for a disability benefit shall be made on an application form and in the manner prescribed by the board.

(c) The employer shall certify on a form prescribed by the board that the participant's employment has terminated.

22960.88. (a) Upon receipt of proof of a participant's death, the beneficiary or beneficiaries shall be entitled to a death benefit that is a lump-sum distribution of the balance remaining in the participant's account.

(1) If the participant died prior to termination of employment or distribution of all of the contributions and earnings credited to the participant's account, the lump-sum distribution shall be an amount that is equal to the balance remaining in the participant's account.

(2) If the participant died while receiving a periodic payment, any remaining payments shall be paid to the beneficiary under the same schedule until there is no balance remaining in the participant's account.

(b) Application for the distribution shall be made on an application form prescribed by the board.

22960.89. Any participant who is entitled to a distribution for retirement or disability that equals or exceeds five thousand dollars ($5,000), may elect to receive the distribution in one of the following forms:

(a) A single lump-sum payment.

(b) Substantially level installment payments for a period of years that extends no longer than the life expectancy of the participant.

(c) A single life annuity.

(d) A joint and survivor annuity for the lifetimes of the participant and the participant's option beneficiary.

22960.90. A beneficiary who is the spouse of the participant and who is entitled to a distribution that equals or exceeds five thousand dollars ($5,000), may elect to receive the distribution in one of the following forms:

(a) A single lump-sum payment.

(b) Substantially level installment payments for a period of years that extends no longer than the life expectancy of the beneficiary.

(c) A single life annuity.

22960.91. A beneficiary who is not the spouse of the participant, and who is entitled to a distribution that equals or exceeds five thousand dollars ($5,000), may elect to receive the distribution in one of the following forms:

(a) A single lump-sum payment.

(b) Substantially level installment payments for a period not to exceed five years.

22960.92. The board may contract with an insurance, annuity, mutual fund, or any other qualified company to provide annuities to participants pursuant to Section 22960.89, to beneficiaries pursuant

to Section 22960.90, and to nonparticipant spouses pursuant to Section 22960.79.

CHAPTER 12. DISTRIBUTIONS

22960.95. Notwithstanding any other provision of this part, a participant, nonparticipant spouse, or beneficiary shall not be permitted to elect a distribution under this part that does not satisfy the requirements of Section 401(a)(9) of Title 26 of the United States Code, including the incidental death benefit requirements of Section 401(a)(9)G and the regulations thereunder. The required beginning date of distributions that reflect the entire interest of the participant shall be as follows:

(a) In the case of a lump-sum distribution to the participant, the lump-sum payment shall be made not later than April 1 of the calendar year following the later of the calendar year in which the participant attains the age of 70 and a half years or the calendar year in which the participant terminates all employment for the employer.

(b) In the case of a distribution to the participant in the form of installment payments or an annuity, payment shall begin not later than April 1 of the calendar year following the later of the calendar year in which the participant attains the age of 70 and a half years or the calendar year in which the participant terminates all employment subject to coverage by the plan.

(c) In the case of a benefit payable on account of the participant's death, distributions shall be paid no later than December 31 of the calendar year in which the fifth anniversary of the participant's date of death occurs unless the beneficiary is the participant's spouse in which case distributions must commence on or before the later of either:

(1) December 31 of the calendar year immediately following the calendar year in which the participant dies.

(2) December 31 of the calendar year in which the participant would have attained the age of 70 and a half years.

22960.96. (a) Distributions from the plan shall be made as soon as practicable after the first valuation date immediately following the date of the application.

(b) Notwithstanding Chapter 3 (commencing with Section 13100) of Part 1 of Division 8 of the Probate Code or any other law to the contrary, the death benefit payable under the plan may be requested by the beneficiary and paid as soon as practicable following receipt of proof of the participant's death.

22960.97. If a person becomes entitled to a distribution from the plan that constitutes an eligible rollover distribution within the meaning of Section 401(a)(31) of Title 26 of the United States Code, the person may elect under terms and conditions established by the board to have the distribution or a portion thereof paid directly to a

plan that constitutes an eligible retirement plan within the meaning of Section 401(a)(31), as specified by that person. Upon the exercise of the election by a person with respect to a distribution or a portion thereof, the distribution by the plan of the amount so designated, once distributable under the terms of the plan, shall be made in the form of a direct rollover to the eligible retirement plan so specified.

22960.98. Except as otherwise provided in this part, all distributions shall be made directly from the fund to the participant or beneficiary. To the extent required by federal and state law, income and other taxes shall be withheld from each benefit payment, and the payment shall be reported to the appropriate governmental agency or agencies.

22960.99. (a) The plan's obligations to a participant, beneficiary, or nonparticipant spouse who has applied for a lump-sum benefit cease upon distribution of the lump-sum benefit.

(1) Deposit in the United States mail of a warrant drawn in favor of the participant, beneficiary, or nonparticipant spouse and addressed to the latest address on file for that person constitutes distribution of the benefit.

(2) Deposit in the United States mail of a notice that the requested electronic funds transfer has been made as directed by the participant, beneficiary, or nonparticipant spouse constitutes distribution of the benefit.

(3) If the participant, beneficiary, or nonparticipant spouse has elected on a form prescribed by the board to transfer all or a specific portion of the account that is eligible for a direct trustee-to-trustee transfer under Section 401(a)(31) of Title 26 of the United States Code, deposit in the United States mail of a notice that the requested transfer has been made constitutes distribution of the benefit.

(b) The plan's obligations to a participant, beneficiary, or nonparticipant spouse who elected to receive a benefit in the form of installment payments or an annuity cease upon distribution of the final payment.

(1) Deposit in the United States mail of a warrant drawn in favor of the participant, beneficiary, or nonparticipant spouse and addressed to the latest address on file for that person constitutes distribution of the benefit.

(2) Deposit in the United States mail of a notice that the requested electronic funds transfer has been made as directed by the participant, beneficiary, or nonparticipant spouse constitutes distribution of the benefit.

(c) Distribution under paragraph (1), (2), or (3) of subdivision (a) or paragraph (1) or (2) of subdivision (b) pursuant to the board's determination in good faith of the existence, identity, or other facts relating to entitlement of persons constitutes a complete discharge and release of the board, system, and plan from liability for payments.

SEC. 12. Section 22822 of the Government Code is amended to read:

22822. (a) Notwithstanding any other provision of this chapter, with respect to state officers and employees, a permanent intermittent employee, who has an appointment of more than six months and works at least half time, shall be eligible to enroll or register not to enroll for health benefits within 60 calendar days after having been credited with a minimum of 480 paid hours within one of two designated 6-month periods in a calendar year. To continue benefits, a permanent intermittent employee must be credited with a minimum of 480 paid hours in a designated 6-month period or 960 paid hours in two consecutive designated 6-month periods. For the purposes of this section, the designated 6-month periods are January 1 through June 30 and July 1 through December 31 of each calendar year.

(b) Permanent intermittent employees who are represented by State Bargaining Unit 6 may enroll or register not to enroll for health benefits within 60 calendar days following graduation from the academies of the Department of Corrections and the Department of the Youth Authority. To continue benefits, a permanent intermittent employee must be credited with a minimum number of hours during the designated periods described in subdivision (a).

SEC. 13. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the provisions of this act to be applicable as soon as possible in the 1997–98 fiscal year, and so facilitate the orderly administration of state government at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 821

An act to amend Section 14837 of the Government Code, relating to state contracts.

[Approved by Governor September 24, 1998. Filed with Secretary of State September 25, 1998.]

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

SECTION 1. Section 14837 of the Government Code is amended to read:

14837. As used in this chapter:

(a) "Department" means the Department of General Services.

(b) "Director" means the Director of General Services.

(c) "Manufacturer" means a business that is both of the following:

(1) Primarily engaged in the chemical or mechanical transformation of raw materials or processed substances into new products.

(2) Classified between Codes 2000 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(d) (1) "Small business" means an independently owned and operated business, which is not dominant in its field of operation, the principal office of which is located in California, the officers of which are domiciled in California, and which, together with affiliates, has 100 or fewer employees, and average annual gross receipts of ten million dollars ($10,000,000) or less over the previous three years, or is a manufacturer, as defined in subdivision (c), with 100 or fewer employees.

(2) The director shall conduct a biennial review of the average annual gross receipt level specified in this subdivision and may adjust that level to reflect changes in the California Consumer Price Index for all items. To reflect unique variations or characteristics of different industries, the director may establish, to the extent necessary, higher qualifying standards than those specified in this subdivision, or alternative standards based on other applicable criteria.

(3) Standards applied under this subdivision shall be established by regulation, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1, and shall preclude the qualification of businesses that are dominant in their industry.

CHAPTER 822

An act to add Sections 2914.2 and 2914.3 to the Business and Professions Code, relating to psychology.

[Approved by Governor September 24, 1998. Filed with Secretary of State September 25, 1998.]

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

SECTION 1. Section 2914.2 is added to the Business and Professions Code, to read:

2914.2. The board shall encourage licensed psychologists to take continuing education courses in psychopharmacology and biological basis of behavior as part of their continuing education.

SEC. 2. Section 2914.3 is added to the Business and Professions Code, to read:

2914.3. (a) The board shall encourage institutions that offer a doctorate degree program in psychology to include in their biobehavioral curriculum, education and training in

psychopharmacology and related topics including pharmacology and clinical pharmacology.

(b) The board shall develop guidelines for the basic education and training of psychologists whose practices include patients with medical conditions and patients with mental and emotional disorders, who may require psychopharmacological treatment and whose management may require collaboration with physicians and other licensed prescribers. In developing these guidelines for training, the board shall consider, but not be limited to, all of the following:

(1) The American Psychological Association's guidelines for training in the biological bases of mental and emotional disorders.

(2) The necessary educational foundation for understanding the biochemical and physiological bases for mental disorders.

(3) Evaluation of the response to psychotropic compounds, including the effects and side effects.

(4) Competent basic practical and theoretical knowledge of neuroanatomy, neurochemistry, and neurophysiology relevant to research and clinical practice.

(5) Knowledge of the biological bases of psychopharmacology.

(6) The locus of action of psychoactive substances and mechanisms by which these substances affect brain function and other systems of the body.

(7) Knowledge of the psychopharmacology of classes of drugs commonly used to treat mental disorders.

(8) Drugs that are commonly abused that may or may not have therapeutic uses.

(9) Education of patients and significant support persons in the risks, benefits, and treatment alternatives to medication.

(10) Appropriate collaboration or consultation with physicians or other prescribers to include the assessment of the need for additional treatment that may include medication or other medical evaluation and treatment and the patient's mental capacity to consent to additional treatment to enhance both the physical and the mental status of the persons being treated.

(11) Knowledge of signs that warrant consideration for referral to a physician.

(c) This section is intended to provide for training of clinical psychologists to improve the ability of clinical psychologists to collaborate with physicians. It is not intended to provide for training psychologists to prescribe medication. Nothing in this section is intended to expand the scope of licensure of psychologists.